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NO. _____

THE SUPREME COURT OF THE UNITED STATES

TERM _____

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THOMAS M. RETTIG

-VS-

THE KENT CITY SCHOOL DISTRICT, ET AL.

83-6494

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

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Rule 15.1.(c) A table of contents as required by Rule 33.5.(a):

15.1.(a) The Questions presented, in general 1

Summarized 24

(b) List of parties below 28

(c) Table of contents .....(i)

Table of authorities .....(ii)

(d) A reference to reports in the courts below 29

(e) Jurisdiction (i).....30

Dates of entry of judgment and orders.(ii).....37

Statutory provision for jurisdiction (iii).....37

(f) Citations of legal provisions 37

Verbatim text contained in Appendix V(A)

(g) A concise statement of the case with facts 38

(h) A statement of reasons for possible plenary cons.....41

(i) Preliminary injunctions and other requests denied ...42

(j) Appendix (I) Court Opinions; see thumb index tab divider

(II) Agency Orders; see thumb index tab divider

(III) Copy of Judgment or Decree; tab divider

(IV) Copy of Notice of Appeal; tab divider

(V)(A) Legal Provisions (Text) and CARC v. ESSEX (411 F.Supp.46)

(B) State Level Review; tab divider

(C) Injunctive Relief sought and denied; tab.

(D) School File of Tom Rettig (Excerpts);tab.

(E) Definition of Syndrome of Autism; tab

Evaluation of the Individualized Educational Programs (IEPs) prepared by the Kent City School District for Tom Rettig (REPORT BY LOU BROWN AND ALISON FORD) (one hundred twenty pages long) and in Record on Appeal Exhibit 2 at TRO Hearg. August 4, 1980. ..... tab index

VITA of Lou Brown, Ph.D., tab index

VITA of Alison Ford, tab index

Rule 15.1.(c) A table of authorities as required by Rule 33.5.(b):

411 F. Supp 46 (1976) CARC v. ESSEX p. 35, 37, App.V(A)

539 F. Supp 768 (1981) RETTIG v. KCSD, p. 37, 38 App I(5)

88 STAT. 582 (Amendment in 1970 of P.L.91-230) p.37,40,App.V(A)3

The Fifth Amendment p.27,37, App.V(A)1

The Fourteenth Amendment p.27,37, App.V(A)1

P.L.91-230 p.11

P.L.93-112 p.6,8,9,10,11,27,34

P.L.93-380 p.6,8,11,12,27,33

P.L.93-516 p.27,37

P.L.94-142 p.6,8,10,12,27,31,33,37, App.V(A)3

20 USC 841 (P.L.93-380 of 1974),88STAT. 484 p.37

20 USC 1401 et seq. p.27, 37, App.V(A)3,4,

20 USC 1401 (17)p.40

20 USC 1412 (6)p.27,40, App.V(A)5

20 USC 1413 p.11

20 USC 1414(a)(5); 1414(b) App.V(A)5,6

20 USC 1415 App.V(A)7

20 USC 1415(b)(2) App.V(A)7

20 USC 1415(e)(2) p.33, App.V(A)7

20 USC 1415(e)(4) p.33, App.V(A)7

28 USC 1254 (2) p.37

29 USC 706 p.27, App.V(A)2

29 USC 794 p.27,37, App.V(A)2

42 USC 1983 p.1,2,6,24,27,37, App.V(A)1

42 USC 1981 p.33, App.V(A)2

42 USC 1988 p.37, App.V(A)2

45 CFR 84.33 p.27,37, App.V(A)9

45 CFR 84.35 p. 27, App.V(A)10

45 CFR 84.36 p.27, App.V(A)10

45 CFR.84.37 p.27, App.V(A)10

45 CFR 121a. p.37, App.V(A)p.11 ff.

45 CFR 121a.5 p.14, App.V(A)11

45 CFR 121a.12 p.15, App.V(A)11

45 CFR 121a.532 p.22,27, App.V(A)16

45 CFR 121a.532 p.27, App.V(A)17

Ohio Revised Code

3313.48 p.2

3313.64 p.2

3313.641 p.2

3317.01B p.2

3319.088 p.16, App.V(A)42

3321. p.26,35,37,38,40, App.V(A)19

3321.04 p.2

3321.05 p.1,26,36,App.V(A)20

3321.07 p.2,24,39, App.V(A)19

3323. p.23,26,37,40

3323.01 p.1,26, App.V(A)21

3323.01 effective since Aug.27,1976 (AmSHB 455)p.6,23,38,App.V(A)23

3323.011 effective May 1972 p.15,31,40, App.V(A)22

3323.04 p.6,18, App.V(A)24

3323.05 p.6,17,23,24,25,31,32,38, App.V(A)24

3323.08 p.25,26, App.V(A)25

3323.11 p.15

Standards of the Board of Education of the State of Ohio

effective 1966 p.37,40, App.V(A)pp.26—32

1973 p.37, App.V(A)33—41

1976 p.37, App.V(A)43—44

1977 p.37, App.V(A)47—49

EDb-215-04 p.15,16,39,40, App.V(A)87,46

EDb-215-05 p.15, App.V(A)35,39,40,41

EDb-215-06 p.15,16,18,20,24,39, App.V(A)35, 38—41

EDb-215-07 p.24,18,20,24,38,39,App.V(A)27,28,29,30,35

EDb-215-09 p.17,24,38, App.V(A)27,35

EDb-215-13 p.24,30,38,39, App.V(A)27,31,32,35,36

EDb-215-17 p.6,24,25,32,40,41,App.V(A)43,44

EDb-401-01 p.2 (MINIMUM STANDARDS FOR OHIO ELEMENTARY SCHOOLS '70.)

3301-51-16 p.32,41,App.V(A)46, 49

3301-51-17(A)(4)(g) App.V(A)47

3301-51-18(A)(8)(a) App.V(A)47

3301-51-18(C)26,40,41, App.V(A)47

3301-51-18(D) p.9,40,41, App.V(A)48

Pursuant to Rule 15.1.(a), Thomas Matthias Rettig presents the following questions by this appeal to the Supreme Court of the United States:

I was born on May 30, 1965 at St. Luke's Hospital in Shaker Heights, a suburb of Cleveland, Ohio. In the fall of that year, my father accepted a teaching position in the Kent City School District. We have been living in Kent since then because my father never left the employ of my school district. Because I was a handicapped child, my father, when I was five years old in 1970, referred me to the director of child study and special education of my school district.[1] When he refused to enroll me in the class for slow learning children which he had been directing for my school district, was I entitled to a Notice of my federal rights under the Fifth and Twelfth Amendments to the U.S. Constitution? Can this denial of my right to the property of a special education without due process of law be construed as the beginning of my claims under 42 U.S.C.A. 1983? Am I entitled to appropriate compensation for this wrong done to me?

When I was six years old, my mother brought me for an appropriate evaluation and class placement to the Office of Michad Chrin. I was again refused enrollment in the class for slow learning children. Geraldine Irvin, the school psychologist, told my mother to enroll me in a program operated by the Ohio Department of Mental Health and Mental Retardation. However, before I could have been enrolled in this program, Section 3321.05 of the Revised Code of Ohio required that the Kent City School District legally dismiss me from attendance in my school district of residence in order to make me eligible for placement in the program for the trainable retarded in my county. Is this de-facto ex-

[1]Section 3323.01 CLASSES AND TRAINING OF TEACHERS FOR THE HANDICAPPED
The state board of education may grant permission to any board of education to establish and maintain classes for the instruction of deaf or blind persons over the age of three, and physically, emotionally, or mentally handicapped persons over the age of five; and to establish and maintain child study, counseling, adjustment, and special instructional services, including home instruction, for persons over the age of five whose learning is retarded, interrupted, or impaired by physical, emotional, or mental handicaps. The state board of education may, by written agreement with the board of trustees of any college or university, arrange with the teacher education department of such college or university for the classroom and in-service training of teachers for handicapped children.

clusion of me a continued violation of my rights under the Constitution and under 42 U.S.C.A. 1983?

My mother enrolled me in a nursery school at Akron University when I was excluded without due process and equal protection at the time I had reached the age of six years and three months.[3] She testified that this placement was not appropriate for a six-year-old. My school district administrators claim they did not legally exclude me because my mother chose the nursery school. Without the legal exclusion, my mother could not enroll me anywhere other than in a private nursery school. This left me in an impossible situation: My parents were permitted by the Ohio General Assembly to provide a private placement for me.[4] Yet they could not place me into a private school that met the Standards of my StateBoard of Education. I received no appropriate special education during school year 1971-72, neither public nor private. Am I entitled to compensatory education from my school district for this school year?

In May 1972, I turned seven years of age. At this time, Michael Chrin, Director of Child Study and Special Education requested "a comprehensive medical evaluation" of the Metropolitan General Hospital in Cleveland so that I could be considered by him

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[3] Section 3321.07. REQUIREMENTS FOR CHILD NOT ATTENDING PUBLIC SCHOOLS. If any child attends upon instruction elsewhere than in a public school, such instruction shall be in a school which conforms to the minimum standards prescribed by the state board of education. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district...

MINIMUM STANDARDS FOR OHIO ELEMENTARY SCHOOLS, State of Ohio, Department of Education, Columbus, Ohio. Revised 1970. Standard EDb-401-01 provides for the statutory requirements of the Ohio Revised Code, 3313.48- Minimum School Day five hours of the noon recess. Ohio Revised Code, 3317.01B - Length of the School Year — The school shall be open for instruction at least 180 days unless this requirement is waived by the State Superintendent of Public Instruction. (Trimester and quarter exceptions are cited.)

Section 3313.64 FREE SCHOOLING FOR RESIDENTS; TUITION FOR NON RESIDENTS. The schools of each city, exempted village, or local school district shall be free to all school residents between five and twenty-one years of age,...

Section 3313.641. SUMMER SCHOOLS, ADULT CLASSES, AND POSTGRADUATE INSTRUCTION Notwithstanding the provisions of Sections 3313.48 and 3313.64 of the R.C. the board of education of a city, exempted village, or local school district may organize and operate a summer school, an evening or day school for adults and out-of-school youth, or technical school or institute for instruction beyond the high school.... which may be open to any pupil irrespective of his age upon such terms and upon payment of such tuition as the board prescribes.

1958 OAG 3060. A board of education may not charge tuition against pupils between six and twenty-one years of age for attendance at special schools, or for materials used or consumed in the schools...

[4] Section 3321.04 COMPULSORY ATTENDANCE. Every parent, ... having charge of any child of compulsory school age ... who has not been determined to be incapable of profiting substantially by further instruction, must send such child to a school which conforms to the minimum standards prescribed by the state board of education, for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year....

"for placement into one of our special education classes for the 1972-73 school year." (Board of Education Exhibit BB; Administrative HearingRecord.) I was hospitalized at this hospital on July 10, 1972 and released on the 14th. The hospital's discharge diagnosis of me was "Mental Retardation and Hyperactivity." I "was evaluated by Mrs. Tinker (Senior Psychologist/Pediatric Psych) and found to have an I.Q. of about 56." (Board of Education Exhibit HHH, page 10.) The "Psychologist ofKent Public Schools" was provided a copy of my Discharge Diagnosis. (HHH, page 12.) While my parents were not sent a copy until March of 1974 (HHH, page 1), my father testified at the local hearing that he and Michael Chrin discussed the copy the school had received from the hospital (Independent Hearing Officer's Hearing, April 3, 1979, p. 152 ff.) prior to my second hospitalization at this hospital.

As stated above, my father testified that he sought to find out my diagnosis from the hospital, but did not receive a copy until March 1974. He testified that he asked Michael Chrin to provide him the information; he refused. "Mr. Chrin said, 'I cannot give you that information; that is privileged information and if I give you that, that means that they will not honor this again and I will receive no more information from the hospital.' That is what he said." (Matthias Rettig, Independent Hearing Officer's Hearing April 3, 1979, pp. 154 and 155; (Administrative Record).

Given the opportunity to rebut this testimony, the Kent City School never availed itself thereof. Independent Hearing Officer Freed, in his final decision states that no medical evaluation was performed and none was legally required. Decision of David P. Freed, April 30, 1979, p. 17:

> "With regard to the medical evaluation, the hearing officer specifically determines that at the time of placement of Tom Rettig there was no publicly financed medical evaluation made of this child and that the District was not required to make any such evaluation."

And again, at p. 24:

> "In conclusion, the hearing officer finds no violation of law with respect to the evaluation and testing procedures utilized by the District in connection with the development of a free and appropriate educational program for Tommy."

Further, at page 42:

> "On each of the issues presented herein, the hearing officer has found that the Kent City School District has met its burden in proving by a preponderance of the evidence that it is providing a free and appropriate

public education for Tommy Rettig."

The final decision of this Hearing Officer was appealed by my mother. The Superintendent of Public Instruction appointed a Referee to

> "review the record of said matter, take additional evidence if deemed appropriate, pursuant to law, and issue a report and recommendation thereon to the State Board of Education."

Report of Referee, September 28, 1979, p. 2.

He further reports, on pages 2 and 3:

> "Although represented by counsel at the IHO hearing, the parents elected to prosecute their appeal to the State Board without the assistance of counsel. On July 20, 1979, Mrs. Rettig submitted a 65-page brief to the Referee in support of the parent's appeal. In that brief, the parents ask the State Board to consider issues which were not raised by either party at the IHO hearing and to compel the production of evidence with respect thereto. In addition, they take exception to the manner in which the pre-hearing disclosure conference and the hearing were conducted by the IHO."
>
> "A responsive brief was filed on behalf of the school district on July 27, 1979..."
>
> "On August 2, 1979, Mrs. Rettig filed an emotional, fourteen-page letter addressed jointly to superintendent Cardinal and the Referee.... Mrs. Rettig states that copies of this letter were sent directly to the members of the State Board."
>
> "The record on appeal consists of the verbatim transcript of the IHO hearing (14 volumes totaling 2,610 pages), Rettig Exhibits 1-67 inclusive, Board of Education Exhibits A-Z, AA-ZZ and AAA-HHH, all inclusive, and Hearing Officer Exhibits 1 and 2. The parents' request to add to this record is dealt with later in this report."

Further, on page 5,

> "An additional issue which the parents seek to raise for the first time upon this appeal is whether the Kent City School District has been in full compliance with the standards relating to special education for handicapped children from 1970 to the present time. With respect to that issue, the parents request the State Board to compel the production of the following documents and additional evidence:" (see pp. 5, 6, 7.)

And the footnote on page 7,

> "As noted previously, the parents and the school district were represented by counsel prior to and throughout the IHO hearing. Therefore, it may be presumed that their agreement as to the issues was made with full knowledge of its legal effect."

My parents had to sign a waiver of their right to a due process hearing before Independent Hearing Officer Freed permitted the hearing which he conducted in behalf of the Ohio State Board of Education to come about. See Hearing Officer Exhibit 1. My parents were not permitted to participate in the disclosure conference. The attorneys decided upon the exhibits.

My parents were witnesses only. My attorney agreed with the other two attorneys to a proof by the preponderance of the evidence rather than in strict compliance with the Administrative Code of Ohio as in effect since 1970.

Referee Clark reports on page 8:

> "The Referee believes that the record is substantially complete as to the stipulated issues and that additional evidence is not necessary to a proper review thereof by the State Board. For that reason the Referee has elected not to convene a Chapter 119 hearing for the purpose of receiving the additional evidence discussed above."

His findings of fact and Conclusions of Law are found on pp.9,10:

> "... the Referee finds himself in total agreement with the findings and conclusions of the IHO, as set forth in his written decision of April 30, 1979. Accordingly, the decision of the IHO is incorporated in this report as if fully rewritten herein.
> The Referee specifically adopts as his own the findings of fact and conclusions of law of the IHO with respect to each issue set forth in Hearing Officer Exhibit 2. (See Decision of Impartial Hearing Officer, pp.14-42)."

His Recommendation to the State Board of Education is found on page 11:

> "...the KentCity School District has met its burden of proving by a preponderance of the evidence that it is providing a free and appropriate public education for Thomas M. Rettig."

My parents appealed to the State Board of Education directly by filing objections to report of referee. The State Board of Education instructed the Superintendent of Public Instruction to review the 201-page brief, and to prepare a report.

> "The brief details the deep concerns that Mrs. Rettig has had and now has in relation to the provision of an appropriate education for Thomas."
>
> "The review of the brief was in two phases:
> 1. Objections relating to the issues presented at the impartial due process hearing.
> 2. Objections going beyond stipulated issues."
>
> "There is no new evidence presented in Mrs. Rettig's objections relative to the stipulated issues."
>
> "The following issues raised in Mrs. Rettig's objections are outside the scope of issues stipulated at the impartial due process hearing."
>
> "While the State Board is not legally obligated to review issues outside of those stipulated, the following additional issues are presented in the interest of fairness to Mrs. Rettig's position to you for your consideration." (pp.3-5.)
>
> "Failure to notify the parents prior to administration of tests.
> Department comment: There is no way to verify the truth of the allegation. There is no indication of when these alleged violations occurred, it may have been before the effective date of House Bill 455 and P.L. 94-142."

This is completely unfair to me; is it not? See Rettig Exh.47 dated 6/77 wherein Michael Chrin became my school psychologist and provided for his unqualified classification of me. He did not inform my parents before he subjected me to this evaluation. Should he not have according to law?[5] Is this action by Michael Chrin in behalf of the Kent City School District and upheld by the Superintendent of Public Instruction not only a constitutional violation of my rights to due process and equal protection, and my statutory right under 42 U.S.C.A.1983, but also a violation of P.L.93-112 and P.L.93-380 and P.L.94-142 vis-a-vis me? [6] If my parents were not told about the tactic evidenced in Rettig Exh.47, how can they protect my rights?

The Superintendent for Public Instruction further tells the State Board of Education, on page 6:

> "There is little merit to the allegation that due process was denied because the decision was rendered by an "independent" rather than an "impartial" hearing officer. This is a distinction without a difference. Assuming that the hearing had indeed been held pursuant to R.C. 3323.04, would a denial of due process have resulted? No, R.C. 3323.04 states that all hearings held under R.C.3323.04 shall be held in accordance with procedures set forth in R.C. 3323.05."[7]

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[5] Amended Substitute House Bill No. 455 took effect August 27, 1976. A copy of this Ohio Statute is contained in the Administrative Record. It is codified as chapter 3323 in the Revised Code of Ohio.

The Ohio State Board of Education adopted Standards for Due Process and Procedural safeguards for Handicapped Children and Youth effective August 28,1976. It is contained in the Administrative Record as Rettig Exhibit 52. The Administrative Code is EDb-21-27. Section (B)Prior Notice (2)Evaluation states:

> "Prior to the initiation of any evaluation activities, parents shall be notified of the intent to identify and formally evaluate any child suspected of needing a special education program or related services. Such notice shall include, but not be limited to:
> a. a request for written permission to evaluate the child. Written permission must be obtained before any evaluation activities are initiated;
> b.a statement of the right to refuse permission for the evaluation with the understanding that the school district can then request an impartial due process hearing;
> c.a statement that should no response be received to the request for permission to evaluate within 30 days of receipt of the notice, the school district may proceed with the evaluation.
> d. reasons the evaluation has been requested and the name of the person(s) who initiated the process;
> e. through n.....

P.L.93-112 took effect in 1973 and in 1974 Congress amended the definition. Rules and Regulations took effect on June 3, 1977.
P.L.93-380 took effect in 1974 and P.L.94-142 took effect in 1975. The Rules and Regulations implementing both statutes took effect October 1, 1977.
All of the above require prior notice.

[7] Section 3323.04 R.C.O.: ...If an agency directly affected by a placement decision objects to such decision, an independent hearing officer, appointed by the school district and the objecting agency....shall conduct a hearing to review the placement decision...The decision of the hearing officer shall be final except that any child affected by such decision or his parents may present a complaint in accordance with Section 3323.05 of the Revised Code."
Section 3323.05 PROCEDURAL SAFEGUARDS (E) When a formal written complaint is received, an opportunity for the aggrieved party to receive a due process hearing conducted by an impartial hearing officer in accordance with standards and

Was I not, in fact, deprived of due process and equal protection by the hearing provided me by the Hearing Officer? Was he not obligated to verify compliance with the Standards for Special Education of the State Board of Education? Instead, he rendered a decision on the preponderance of the evidence which allowed him to ignore any reference to due process regarding my eligibility for an education under Ohio school law which addresses both of the major areas of my disability: retardation and hyperactivity? Is not the State Superintendent of Public Instruction aiding and abetting the Kent City School District? Since the Board of Education of Ohio eventually affirmed the conclusion of its own independent hearing officer David Freed, as recommended by its independent referee William Clark, as passed upon by the State Superintendent of Public Instruction, is it not true that the State of Ohio is in fact aiding and abetting the KentCity School District in its violations of my rights as a handicapped citizen? Don't I have a constitutional tort against my school district and my State? Are they not all violating my statutory right under the public laws cited in footnote 5? Do these federal statutes require a diagnosis or medical evaluation to assure for me that I am not misclassified as being unable to learn the skills I need in order for me to live without caretakers in an institution? Under these statutes, is it not paramount that an appropriate pre-placement evaluation be made of me; and that I be re-evaluated when my teacher or parent request it, and when the school district needs appropriate evaluation to design and implement my individualized education plan?

Judge Aldrich had received this record of the administrative miscarriage of my rights. Should she not have ordered a multi-factored evaluation to be performed on me at the time I requested of her to provide a preliminary injunction against Kent, Ohio? From my perspective, she, too aided and abetted the perpetrators. Did the District Court commit a legal error when it refused to intervene in my behalf at the TRO hearing in August 1980?

PROCEDURES adopted by the state board of education....
A Party to a hearing under this division shall be accorded:(1) The right to be accompanied and advised by counsel and by individuals with special knowledge... (2)The right to present evidence and confront, cross-examine, and compel...

When she tried the case on the merits, Judge Aldrich refused to intervene in my behalf other than to order a multi-factored evaluation of me and some extra-curricular activities at a minimum of one hour per week. Is the information in the administrative record and the testimony and evaluation provided to the District Court in August 1980 and in May 1981 not sufficient to satisfy my eligibility for year-round programming which must include systematic instruction of self-help skills for independent living and systematic instruction in on-the-job training to prepare me for living now and in the future without primary caretakers? And without prospective life-long sheltered activity center placement with people who are mentally retarded? Am I not entitled to learn systematically to adapt my behavior which makes learning so very hard for me?

The District Court, for whatever reason, apparently ignored the wealth of documentation provided in my behalf. The Sixth Circuit Court of Appeals not only upheld the lower Court, it vacated the part of the District Court Order to provide me with a minimum of one hour of extra-curricular activities to permit me to learn to socialize with some peers. On remand, the District Court upheld its original Order of this issue. This Order has been appealed by the Kent City School District for the second time to the Sixth Circuit under the Education for All Handicapped Children Act of 1975. Does this statute not require dissatisfaction of a party at the state level review in order to entertain a complaint/appeal in the federal courts? Certainly, neither the Kent City School District, nor the State of Ohio were aggrieved by the state level review! Both my mother and I cross-appealed the second round of the Order of Judge Aldrich. The matter is pending in Cincinnati. Is the disposition by the Sixth Circuit of my complaint affording me the rights guaranteed me by my State and by my Nation? (In terms of the Constitution; 42 U.S.C.A. 1983; P.L. 93-112; P.L.93-380; P.L.94-142?) Did the Appeals Court commit any error(s)? Should my parents not have been notified prior to the administration of the so-called group assessment by Michael Chrin when he singled me out and performed that so-called multi-factored evaluation of me? If he can get away with violating the due

process rights of not only me but of all of my handicapped peers, why should he have to bother to provide notice to my parents at any time? Is it not most likely true that this tactic documented in Rettig Exhibit 47 in June of 1977 was in fact done in order to "prove" to the State Department of Education and, in turn, to Washington, that Kent (and Ohio) were complying with the regulations implementing both federal statutes under discussion here? Thomas Rettig needs nothing in the way of related services other than what the state operated/administered program for children who are classified trainable need. Or do I? Or did I? Am I entitled to several years of compensatory education?

My parents objected to procedures and instruments used that resulted in the so-called compliance by the District with the Order of Judge Aldrich. The District ignored my parents. My parents asked Judge Aldrich to intervene. She refused on two occasions. She ordered my parents to exhaust administrative remedies again. Even though the complaint against my teacher and school were based upon Section 504 (P.L.93-112). Does P.L.93-112 require exhaustion of administrative remedies? Judge Aldrich also said she did not receive a complaint. My mother incorporated the complaint in the Memorandum in support of her Motion for Preliminary Injunction which she filed as a related case in District Court in 1982. Did this error by the District Court provide me with my rights?

My mother again requested a due process hearing of the Kent City School District to challenge the evaluation the District conducted on me. The Hearing Officer, Mary Lents, dismissed this request for due process hearing because my mother supposedly did not provide sufficient specifics. We never had an opportunity to challenge the Court-ordered multi-factored evaluation before the Hearing Officer. We never were provided the documents which the Kent City School District is mandated under State and Federal statutes to prepare and implement in my behalf.[8] The State Board of Education upheld the District's contention that no meeting of the placement commit-

[8] Effective April 25, 1977, Section 3301-51-18 STANDARDS FOR MULTI-FACTORED EVALUATION, LEAST RESTRICTIVE PLACEMENT AND INDIVIDUALIZED EDUCATIONAL PLAN (C) Multi-Factored Evaluation (Subparagraphs, 14 in total); and (D) Placement Conference requiring a written report verifying compliance with all mandates on least restrictive alternative and individualized educational plan. While the District may refuse participation by the parents in this required placement committee conference, the district is required by Ohio statute to implement for Thomas Rettig the entire subparagraph (D) because it details the specifics of the components of educational services required for the student before the IEP can be developed together with the parents.

tee was required for me. The State Board refused to invoke its powers in my behalf to provide the documents to me or to my parents. Without the documents, we were unable to specify the issues in the first place. The State Board refused to convene a chapter 119 Hearing (Admin. Code of Ohio) in order to receive the evidence. Do these actions not in fact constitute a continuation of the denial of my right to a free appropriate public education under both P.L. 93-112 (Section 504), and under P.L. 94-142? Are these actions not clear violations of my Constitutional rights as well? A new law suit is presently pending before Judge Lambros in Cleveland... The District has chosen for me a much more restrictive alternative during the course of this compounded litigation. I am no longer receiving instruction in art with non-handicapped peers, for example. This constitutes a change from the time of the local hearing. Should I not be receiving art with non-handicapped peers as I did when the District made its case before the hearing officer back in 1979? I understand that my parents never agreed with the District nor with the State that I should be removed from daily contact with my non-handicapped peers, as was the case in 1979: I spent a period of time with a regular fourth grade class, on a daily basis; and I also had instruction in art, physical education, and music with my non-handicapped peers several times a week. I could be on my required diet because I was able to walk back and forth from home to school for lunch. The high school is too far for me to walk home for lunch. The District never ever considered, in my so-called individualized education plan which it keeps forcing upon me, my need to learn to prepare the meals required by my diet as prescribed by my personal physician, Dr. Theron Randolph, clinical allergist, of Chicago, Illinois.
The questions I have in this regard are the following: Has the District violated my right to placement in the least restrictive alternative under both State and Federal statutes by taking away the opportunities cited above?[9] Should my individualized educational plan address my dietery need? And, should I be taught, on a daily basis, how to prepare the meals I need to stay on the diet?

[9] 20 U.S.C.1415(e)(3)During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child,...

My mother explained to me that I would not be learning to maintain myself on this diet if she continued to prepare my meals for me. And, if she brings the meals to me to school daily, as she did during the school years 1975-76, 1976-77, 1977-78 (when my class was housed at the University), then I have no opportunity at all to be with my non-handicapped peers at my high school. Dr. Randolph still deems a diversified rotatary diet necessary for me to help me learn. Is it the responsibility of my mother to continue me on the diet? I have an apartment for which I pay, in part, with the money I receive from supplemental security income. I have asked for a teacher to instruct me in this apartment, but the District keeps refusing me a teacher. My parents considered hiring a teacher. In August of last summer, while on a bikeride with my private tutor -neither the District, nor the State of Ohio provided any instruction to me whatsoever the last several summers - I withdrew to a swampy area off the bike trail near the Cuyahoga River. I was missing for a period of twenty-three hours before a helicopter of the Ohio National Guard spotted my bike and alerted the police who had been conducting an intensive search for me. Now my parents are unable to find a qualified tutor for me. My mother or father spend time with me in my apartment; but I am not doing for myself what needs to be done. My mother bathes me; she cooks for me; she washes my clothes; she shops for me. I have not been taught anything I can apply to help with chores. I have no peer friends. My school provides me no extra-curricular activities whatsoever. These are always on appeal in some court. Whatever happened to implementation of the equal opportunity goal promised for me in P.L.93-380 and P.L. 93-112? Am I not entitled to extra-curricular services with either the non-handicapped or with the handicapped depending on the required multi-factored evaluation as the basis for the determination?[10]

[10] Congress enacted, in 1970, P.L.91-230. Section 613 of Part B-ASSISTANCE TO THE STATES FOR THE EDUCATION OF HANDICAPPED CHILDREN required of the State of Ohio a plan setting forth "policies and procedures as will provide satisfactory assurance that funds paid to the State under this part will be expended ... solely to initiate, expand, or improve programs and projects... (1)which are designed to meet the special educational and related needs of handicapped children throughout the State... In 1974, Congress amended P.L.91-230. The new amendment contained in P.L.93-380 is found at 20 U.S.C.1413 and note: "Section 613(a) of such act is further amended by ...(3)by adding...(12)(A) ESTABLISH A GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITIES TO ALL HANDICAPPED CHILDREN,... (13)(A)(1)PRIOR NOTICE TO PARENTS..., (B) PROCEDURES TO INSURE THAT HANDICAPPED CHILDREN ... ARE EDUCATED WITH CHILDREN WHO ARE NOT HANDICAPPED AND (C) PROCEDURES TO ENSURE THE TESTING AND EVALUATION MATERIALS AND PROCEDURES UTILIZED FOR THE PURPOSES OF CLASSIFICATION AND PLACEMENT OF HANDI-

The federal Courts have told me that the EHA and EAHCA did not require year-round instruction per se. I understand and accept that. However, in my case on appeal with the Supreme Court, have I not demonstrated that my District did not perform any pre-placement evaluation of me as required under Ohio school law? The District claims it never received a response from the Cleveland Metropolitan Hospital to its request for a comprehensive medical evaluation and diagnosis of me. My father testified that he and Michael Chrin discussed this matter, but that my father never saw a copy of it until March 1974. I have already asked this Court questions concerning the effect my behavior of withdrawal from the teaching and learning environment and from people have and whether those should be included in my individualized educational plan to help me learn in spite of them. I have also addressed my concerns for providing, and teaching me, the dietary regimen I need to help me learn. Does the comprehensive record on appeal here not demonstrate my need for year-round programming? Does this record not demonstrate my need for occupational instruction beyond an evaluation which is all the District has done for me in occupational therapy? The so-called IEP for 1977-78 contains, in the handwriting of Michael Chrin, a need of mine to be met by occupational therapy. Except for an initial attempt by my teacher in the fall of 1977 to do something according to the directives of Children's Hospital of Akron's occupational therapist -HER TESTIMONY IS CONTAINED IN THE ADMINISTRATIVE RECORD in Hearing of Feb.21, 1979, pp. 131 ff. and Hearing of Feb.23, 1979 beginning on page 5; also the related exhibits: Rettig Exhibit 59 OCCUPATIONAL THERAPY EVALUATION of me, (10-27-77); Rettig Exh. 61 OCCUPATIONAL THERAPY SCHOOL VISIT with my teacher on 11-21-77 and the therapist from Children's Hospital who did the evaluation a month earlier, and Rettig Exhibit 60 dated 12-29-77 relative to my OCCUPATIONAL THERAPY FOLLOW-UP VISIT indicating that there was no working relationship between my teacher and the therapist who prescribed the therapy for me. The promise of occupational therapy was the reason my father signed the IEP for 1977-78. However, it was only a promise. No service for me was actually provided.

See page 17 of Hearing of Feb. 23, 1979. See also page 30 in response to Dennis Whalen's cross-examination of this therapist as to whether a teacher could implement an occupational therapy program that was specifically designed for me, she testified:

> "By that I mean that in this particular instance, I am a person who works for Children's Hospital and I don't have, you know, any -- I can't come over here to the Kent Public Schools any time I think Sue Taylor would need some help. I have to be invited here, and I can't rally say that she is working under my supervision if I don't have the ability to monitor what she is doing."

Continuing on page 31:

> "...Sue Taylor and I agreed on the way in which this would be followed up, but there was never any followup...."

She testified that she had a follow-up conversation with Michael Chrin in the spring of 1978 (page 47) concerning the provision of occupational services for me. "What was your answer to Mr. Chrin's question about whether or not OT could be provided to the Kent Public Schools from Children's Hosptial?"

"What was my answer? That, yes, we could provide that."

Question: "Did Mr. Chrin ever contact you again concerning employing Children's Hospital for occupational therapy?"

Answer of Witness: "No."

Yet my individualized education plan which my father had signed specifically called for these services to be performed by this very therapist of Children's Hospital. Based upon these facts, Should not my IEP for school year 1978-79 have included occupational therapy? The hearing officer apparently deemed the concern moot because at the time of the local hearing in 1979, the District employed a part-time occupational therapist who had time to evaluate me; however, she did not provide any occupational therapy for me. The so-called IEPs which the District developed for me for school years 79-80 and 80-81 do not provide for any occupational therapy for me either. They all are in the record. The District Court found the issue moot, and the 6th Circuit Court upheld her. To me no issue is moot, including occupational therapy. I expect compensation for the wrong done to me. Am I entitled compensatory occupational therapy?

The Hearing Officer determined that my teacher was qualified to teach me on a day-to-day basis. He also determined that she was qualified to evaluate my specific needs apparently regarding the scope of related services for the 1978-79 IEPP, since no evaluation

was done and, in his opinion, none was required. I must and hereby do ask this Highest Court in my country: Was my teacher Sue Taylor qualified to make those decisions? My diagnosis since 1972 has been educable mental retardation and hyperactivity. In 1974, my parents took me to the Judevine Center for Autistic Children in St. Louis, Missouri. There are several exhibits relevant to this fact in the Administrative Record, as is the testimony of two professionals from this specialized field who evaluated and treated me at St. Louis in 1974 and came to Kent to my home just prior to the commencement of the local hearing in January 1979 when they did another psycho-educational evaluation of me. They diagnosed me as having had infantile autism since birth. They based their diagnosis on two periods of my childhood: The evaluation they did of me in 1974, and the questionnaires my mother had to fill out to evaluate the years prior to 1974, going all the way back to infancy. My mother testified for about thirteen hours as my witness before Hearing Officer Freed to provide opportunities to cross-examine her actions in my behalf. In January 1979, these two staff (their qualifications are in the Administrative Record) determined that I still had autism, among other specific types of programming for me.

The Rules and Regulations implementing Part B of the Education of the Handicapped Act, 45 C.F.R.121a.5 provides the following definitions:

> (a) As used in this part, the term "handicapped children" means those children evaluated in accordance with 121a.530-121a.534 as being ....seriously emotionally disturbed,... other health impaired,... mentally retarded, ... multi-handicapped... who, because of those impairments need special education and related services.
>
> (b) The terms used in this definition are defined as follows:
> (8) "Seriously emotionally disturbed" is defined as follows:
> (ii) The term includes children who are ~~[illegible]~~ autistic.

Autism is my primary handicapping condition. It has not been properly addressed in my so-called individualized educational program plans because there was never any provision made to address what the various experts who knew me personally and who testified for me, considered, in their qualified professional opinions, to be necessary components of related services to be included in my individualized education plan.

None of my teachers were qualified to evaluate my needs; they

were not qualified to teach me either: 121a.12 defines "Qualified"

> As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comperable requirements which apply to the area in which he or she is providing special education or related services.

The Ohio General Assembly addresses teachers' qualifications. 3323.11 R.C.O. states "Teachers in education programs under this chapter shall possess the usual qualifications required of special education teachers in the public schools."

To me, as a student with autism, my severe behavioral handicaps of withdrawing from teachers and other people, and my withdrawing from situations in my learning environment, constitute a foremost need to address the specific severe behavioral handicaps in an individualized educational plan that will reasonably calculate the types and degrees of specilized services I need in order to avoid institutionalization as an adult.

The State Board of Education has promulgated Standards for Special Education to implement 3323.011 R.C.O. In 1974, Michael Chrin placed me into a class for severely and/or multiply impaired children. This is EDb-215-04 and is contained in the Record which admitted various exhibits before Judge Aldrich in Cleveland. The State of Ohio introduced it at that time as State Exhibit E. Page 22, in its descriptive title of EDb-215-04 PROGRAM STANDARDS FOR CHILDREN WITH SEVERE AND/OR MULTIPLE IMPAIRMENTS readily indicates to a careful reviewer of State Exhibit E that the important word "UNITS" is completely absent. For a comparison, please see page 4, for example: EDb-215-01 Program Standards for Special Education UNITS for Hearing Impaired Children; see page 10: EDb-215-02 Program Standards for Special Education UNITS for Crippled Children; see page 24: EDb-215-05 Program Standards for Special Education UNITS for Learning and Behavioral Disabilities; see page 29: EDb-215-06 Program Standards for Special Education UNITS for Children with Severe Behavioral Handicaps (Emotionally Disturbed). As the Hearing Officer and every agency after him,-since they all upheld him- determined that no diagnosis was done on me which was used as the basis for my education and related services by the District, and no appropriate evaluation exists from the District, the Record of expert testimony and exhibits in the Record for me

must become the basis which this Court should use in trying my plea for compensatory education.

As stated above, the federal regulations clearly require that my severe behavioral handicaps be evaluated by qualified professionals. As further stated, EDb-215-04 is not a UNIT of students who have homogenious needs. we are all differently impaired. The identification of the differentiated impairments impacting upon me is what is critical. This, the school has never done for me. A teacher, to be qualified according to EDb-215-06 requires State Board of Education Certification in this language: (I) Qualifications (on page 33 of StateDefendants Exhibit B):

1. The teacher shall meet all the requirements for a certificate as established by the State Board of Education for this area of specialization.

2. The supervisor of programs for children with severe behavioral handicaps shall meet the following qualifications:

   a. Hold certification as a teacher of Learning and Behavioral Disabilities.
   b. Hold a supervisory certificate.
   c. Show evidence of at least three years' teaching experience in approved classes for Learning and Behavioral Disabilities

3. Teacher Aides andVolunteers
   a. Units may utilize the services of aides possessing a valid educational aide permit as defined in Section 3319.088 of the Revised Code.
   b. The school district shall have written policies and procedures outlining:
      (2) A planned sequence of continuing education.
      (3) The process for direct continuing supervision and evaluation of the services of such personnel.
      (4) Job description of the role and function and the administrative relationship.

The State of Ohio Board of Education does not certify teachers in the handicapping area of emotional disturbance. It does not certify teachers in autism. It does not certify teachers in multi-handicapped areas. Even if my teachers had been qualified to be certified to teach me, their supervisor throughout the years herein being litigated was Michael Chrin. His vita is in the Administrative Record as Board Exhibit AA. He was never certified to teach any kind of handicapped child. The only qualifications he has are those of a school psychologist to separate school-aged kids into handicapped and non-handicapped. He has no further expertese. Since he has been the Kent Director of Special Education and Child Study since 1968, he has absolutely no business acting as my school psycholgist, even if he ever had been a child psycho-

App. D 19

logist - as Judge Aldrich erroneously cited him to be.

EDb-215-09 PROGRAM STANDARDS FOR SPECIAL EDUCATION UNITS FOR SCHOOL PSYCHOLOGICAL SERVICES (CHILD STUDY) (B) Eligibility provides (see page 46 of State Exhibit E):

1. The population eligible for school psychological services includes all children identified as or thought to be handicapped; children in regular school programs, and their parents; and educational services personnel who need assistance in modifying or implementing instructional strategies.

Have I been eligible for child study from the District?

EDb-215-09 (C) Comprehensive Services to the Educational Program provides: (still page 46)

1. The school district shall have a comprehensive plan for special education approved by the State Board of Education
2. The school psychologist shall be assigned as a staff person and consultant in an advisory and leadership role, and shall not assume authority or responsibility for the operation of the school program.
3. The primary responsibility of the school psychologist shall be the development of a comprehensive program which involves screening to identify students with difficulties; individual diagnosis and remediation; individual and group work; staff development programs for school and related personnel; and strategies for classroom management, instructional methodology and crisis intervention, designed to assist the school in determining appropriate educational options for children.
4. The primary function of the school psychologist shall be the intensive study and planned services to children, teachers and parents based on a differentiated referral system which includes child-study, scheduled parent and teacher conferences, psychological report writing and planning, implementing and monitoring intervention strategies.
7. The school psychologist shall effectively and appropriately utilize child-study techniques, including:
   a. A variety of recognized individual tests of ability.
   b. Individual measures to determine academic performance, social and behavioral adaptability, and perceptual motor problems.
   c. Criterion reference instrumentation, interviewing and observational techniques.
   d. Projective procedures.
8. All comprehensive individual studies shall be accompanied by concise written reports which include identifying data, reason for referral, interpretation of observational and assessment data, planned systems for teaching and reinforcement, specific recommendations for intervention, remediation and follow-up with the child, teacher and/or parent.

Several of my teachers requested child-study services for me after my enrollment by Michael Chrin. However, all of these requests were subsequent to the enactment of Section 3323.05 R.C.O. which provided for the right of my parents to refuse permission for such child-study. My mother kept refusing permission. But my teachers kept asking for the help. Have I not been entitled to the benefit of child-study from my school district? Should not the district have proceeded to a due process hearing in my

behalf? Section 3323.04 R.C.O. provides for the settlement of the dispute between the agencies who are responsible.

I ask that the Supreme Court consider the vast injustices done to me in light of the Standards for Special Education, including the above for Child-Study, when it reviews the Administrative Record and the Judicial Record in my case.

Have my teachers been qualified according to my multiple handicaps since Ohio does not certify teachers as being qualified to teach me who has a diagnosis involving two major areas of disability which require very specific intervention strategies, the two often conflicting. See the testimony of Dr. Donnellen before Judge Aldrich. (Friday, May 8, 1981, pp. 11 ff.)

Was Michael Chrin qualified to supervise my teachers and speech therapist? He never held any type of certificate qualifying him to teach any type of handicapped areas. (See Board Exhibit AA). The State Board of Ohio has two mandates for the supervisor. They are found at EDb-215-06 (H)(3) The supervisor shall be responsible for:

a. Program evaluation for the purpose of identifying program strengths and needs.
b. The development and implementation of strategies to strengthen those areas identified.

Even if Michael Chrin had ever been qualified to supervise my educational program -which he clearly was not- as the administrator of the program, was he not in a big conflict of interest inherent in this role for the District, the provider of services, and me, the consumer of them? See Rettig Exhibit 54 (Admin. Record) wherein he refuses the requests my parents had made for my IEP:

> "As was discussed with you at your son's IEP conference November 21, several sections of your four pages of written requests cannot be added to Thomas' IEP because they are not specific related services to be directly provided for him, therefore, not appropriate or required for inclusion as part of any student's IEP....
>
> I further indicated, as chairman of the IEP review committee, that requests for services that are not currently provided for any Kent City School children or by Ohio special education programs would not be added to any student's IEP..."

See also Rettig Exhibit 53 (Admin.Record) wherein he refuses the requests my parents made for my IEP for 1977-78 (the above was for 78-79):

> "Enclosed is a copy of Thomas' Individualized Educational Plan that was discussed in detail with you at our 11-22-77 conference.
> After studying your eight typed requests given to me after

the conference, I find they cannot be included as part of the IEP because the requests are not statements of Thomas' present levels of performance or annual/short term instructional objectives..."

Do my parents not have a right to be involved in the development of my individualized educational plan? Is it necessarily in my best interest if they acquiesce what Michael Chrin permitted my teachers to include in my IEP? Were not my parents really acting my best interests based upon the qualifications of the decision makers and implementors of those decisions? Yet, the District never filed for a due process hearing in my behalf. How can the District possibly implement the Standards for Special Education regarding my right to due process concerning my elibility and my evaluation, and my placement into individualized educational programs and required related services which have been specifically designed and implemented for my helping me accomplish my goal of learning the specific skills necessary for survival outside an institution? How could it possibly have accomplished this task? The District gave some degree of administrative consideration to the requests my parents made in my behalf. But this is not all that is required; is it? The District has no documentation that justifies denying me year-round schooling because it has no such child-study as the Standards require. The District has no documentation that justifies denying me occupational therapy services as it has been doing. All it has is evaluation that shows I need occupational therapy to learn to manipulate fasteners used on bought clothing: unbuttoning (I can button some large buttons, but not small shirt buttons); I need to learn to manipulate buttons and hooks commonly used on men's trousers. I also need to learn to bathe independently and to dress independently. I need to learn to prepare some very simple meals independently. To name a very few basic things. As far as recreation is concerned, I have a lot of free time but I have not been taught to fill the time with activities that my peers engage in. I have a pet dog but I can't go on walks with her independently. I had learned to walk to and from school independently in the past. But I can't do it now. I depend on my family for all of this. Don't I have the right to receive very systematic instruction in extra-curricular leisure type activities from my District? I have no friend.

In school, I spent most of my day with an aide because my teachers are responsible for the instruction of all of my classmates. Not one of those aides provided even one copy of the educational aide permit as required by the Ohio General Assembly and showing the mandate from the Ohio Board of Education to the school district concerning their utilization has been met:

EDb-215-06 (I)(3) Teacher Aides and Volunteers
(b) The school district shall have written policies and procedures outlining:
(1) Creteria for selection.
(2) A planned sequence of continuing education.
(3) The process for direct continuing supervision and evaluation of the services of such personnel.
(4) Job description of the role and function and the administrative relationship.

The Administrative Record includes the testimony of all of the teachers employed by the District to whom Michael Chrin assigned me. It demonstrates that there were many part-time aides utilized by the District. Given the fact that the District had no child-study done on me, and clearly the District did not accept as basis for my IEP the evaluations my parents had done of me, and given the dire lack of any professional qualifications of my teachers and their supervisor Chrin, and given the fact that none of the number of aides - numbered close to twenty over the years being litigated - met the requirements of the State Board of Education which promulgated the Statute of the Ohio Assembly.- is it not blatantly obvious that Michael Chrin has been acting vis-a-vis me in a most arbitrary and subjective way? Since I am suing him in his official capacity as the administrator charged by my District to implement the mandates of the Ohio State Board of Education, is not the District responsible for his actions and/or inactions? He accepted a position in a conflict of interest situation. He acted as my school psychologist, as my administrator, as the supervisor of my teachers, as the chairman of the placement and review committee which my District is required to convene for me. He did all of this under full knowledge that he lacked the professional and legal qualifications. Yet superintendent Cardinal never required Michael Chrin to provide Cardinal with any copies of the required reports of each and every meeting of the placement and review committee. These have been refused to my parents on several occasions under various guises. Yet Cardinal kept assigning me to Chrin year after year after year without the related services I need.

I have been excluded from school attendance on a defacto basis. I have been receiving supervision as though I were an incapable child lawfully so determined. This is an outrage. I have never been so determined by any person, nor by any agency. Except by Michael Chrin as he does via his infamous group assessments of me and my handicapped peers. He provides no Notice to my parents of his intent to commit the atrocity on a regular basis. Based upon these facts, is my District and/or my State responsible to provide me several years of compensatory education for each and every year I received vegetation services instead of an education designed and implemented and reviewed according to the Standards for Special Education?

As referred to earlier in this statement, the District has not met the legal requirements when it administered the evaluation in response to the Order of Judge Aldrich in 1981. Both the District and the State of Ohio refused my parents the opportunity to openly challenge the so-called document and the qualifications of those responsible for it. For this reason, in part, another law suit is pending in Cleveland at this time. Judge Lambros has postponed a decision on our request for preliminary injunction and TRO because my individualized education plans for the last few years have been tied by the District to the improper evaluation. And Judge Aldrich refused, in 1981 to permit us to add to our complaint of December 13, 1979 the disputed school years 79-80 and 80-81 for which the District had not multi-factored evaluation according to the determination of Judge Aldrich in her Order of August 1981, on appeal here at the Supreme Court. She stated that those IEPs were not properly before the Court based upon her refusal of our request to add them. Should Judge Aldrich not have permitted us to put them before her for determination? However, the District applied with Judge Aldrich on April 9, 1981:

> "MOTION FOR DISCOVERY Now comes the Defendant, Kent City School District, and moves this Court for an Order compelling the Plaintiffs to permit the performance of a "multi-factored" evaluation of the Plaintiff, Thomas Rettig. ... The requested multi-factored evaluation is relevant, material and necessary for the review of the administrative proceedings which have preceded the instant action and consideration of the relief sought by the Plaintiffs."

Judge Aldrich denied the Motion for Discovery. She did order upon the District, however, to conduct such an evaluation in

"strict compliance with 121a.532." She ordered this, in part, because it was part of the relief I had requested through my attorney at the time. She also ordered it because the District did not have a legal evaluation of me. Therefore, is it appropriate to request that the Supreme Court consider the quality of the education forced upon me for those two school years in light of the fact that the District had no multi-factored evaluation which it utilized in the development of any of my so-called IEPPs? In a footnote, Judge Aldrich addresses the evaluation report done by a co-ordinator of the Mid-Eastern-Ohio Regional Resource Center of an evaluation of me in 1976. However, this document is dated 12-3-76 (Board Exhibit S; Administrative Record). App. E D 14 The IEPP which the District concocted for me for that school year is dated 11/12/76 (Rettig Exhibit 44; Administrative Record). My teacher for that school year, Linda Leavitt, on 10-21-76, applied for School Psychologists Services: Evaluation, Consulting and/or Counseling. (Board of Education Exhibit R; Administrative Record). App. E D 12 The same exhibit indicates that her application was processed on November 23, 1976:

> "Concise Description of suspected problem: Reported and observed behavior similar to children that are classified as autistic. Tom is extremely difficult to motivate regarding specific educational activities. His attentive behavior for learning tasks is very short termed and he is easily distracted. School ability, in particular abstract reasoning and short/long term memory, appear to be very limited."
>
> Have school psychological services been provided in the past? Yes
>
> Reasons for Evaluation: Re-assess school ability to help determine optimal learning modalities for maximum success. Tom's present level of school achievement learning strengths and weakness as assessed by a school psychologist are needed to help further plan the most appropriate instructional program."

Based upon this information, the school psychological services referred to above must be those done by Geraldine Irvin in 1971 and/or those done by Michael Chrin in 1970. That might explain the reason that Geraldine Irvin was present at the meeting with my teacher and parents on the day they were provided a copy of the 1976-77 IEPP. My parents refused to sign this application for "Service is to be provided by a certified school psychologist or intern supervised by this person..." (Still Rettig Exhibit R.) Instead, my mother drafted her own "Consent for multi-factored evaluations of Thomas Rettig. (See Board Exhibit GG; Admin.Record)

However, only the psychological part was done which is that of the MEO/SERRC psychologist. Is this not a clear violation of my rights under newly enacted Substitute House Bill 455 which became law as of August 28, 1976 in Ohio? Chapter 3323. Section .05 PROCEDURAL SAFEGUARDS (C):

> Prior written notice to the child's parents of any proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, including notice of all procedures available under this section. Notice of placement or change of placement shall be made by certified mail.

At the bottom of the application (Board of Education Exhibit R):

> ... my rights in obtaining help for my child have been fully explained to me by the school staff.

No wonder my parents kept refusing these types of requests! Does this constitute due process for me, the handicapped child who is entitled to procedural safeguards in all the decisions which are being made in my behalf since I can't yet make them for myself?

Three professors testified in my behalf before Judge Aldrich. Their testimony and their report regarding their criticism of the so-called IEPs which the District provided for me are contained in the Record. It was their opinion that the education provided to me, as reported in those "documents" of the District's, was highly inappropriate for my dual diagnosis. They considered the "IEPPs" for 1979-80 and 1980-81 as inappropriate as the earlier ones which Judge Aldrich considered "properly before the Court."

Based upon this state of affairs, to wit: the District applied for an Order upon my parents to give permission to evaluate me in 1981, and upon the Court's finding no multi-factored evaluation exhisted - as corrected by me as to the error of the Court, above- and the professional opinions of those Court-qualified experts of my "IEPPs", am I eligible for compensatory education from my District and State for school years 79-80 and 80-81? This is important in light of the fact that the new related law suit picks up with the Court-Ordered evaluation which my mother and I intend to challenge, leaving those two school years unaccounted for. If these two years may not be considered by the Supreme Court at this time, then we will have to amend our complaint in Cleveland to include them. We are not willing to give them up. I cannot afford to do it because I am still too dependent on my parents or someone who might have to take their place.

meant to include the Ohio Statutes and Standards as effective in the time intervals relative to this litigation.

1. Did the nursery school education I received in 1971-72 comport with the requirements of Ohio Revised Code 3321.07? Or should I have been placed according to Standards EDb-215-07, 09, 13? The records are located in App.V(D); the Ohio Statutes and Standards are in App.V(A).

We attempted, unsuccessfully, to raise these issues at the time of the State Level Review in 1979. 42 USC 1983; Constitutional provisions, App.V(A).

2. Did the Kent City School District afford me my federal rights when Michael Chrin placed me, in 1974, without the benefit of a multi-factored assessment procedure by a qualified psychologist? Did it afford me my federal rights in not re-evaluating me at all until 1976? Did the "education" I received during the years 74-76 meet the requirements of the State Standards as determined by the needs indicated in the comprehensive evaluations done at Cleveland Metropolitan Hospital in 1972 and 1974? Based upon those evaluations, was I eligible for the opportunities provided in Standard EDb-215-06? Did the "behavior modification" I received at the hands of the Kent City School District meet the requirements of 06? Is there, in fact, a plan specifically developed in my behalf to address motivation and withdrawal and other adaptive behavior which adversely affects my ability to learn? We attempted, unsuccessfully, to address this issue at the time of the State Level Review in 1979. See App.V(B).

3. In 1976, my teacher signed an application requesting the services of a school psychologist for me. The Ohio General Assembly had just enacted new due process legislation (O.R.C. 3323.05. My mother gave her permission to Michael Chrin for an inter-disciplinary multi-factored evaluation which was to include occupational therapy and physical education according to the prescriptive recommendations of qualified professionals. Michael Chrin chose to afford me only the services of the school psychologist. He did not convene the required placement committee conference according to EDb-215-17 - there is no such report in

the files. No certified letter was sent to my parents as required by this Standard. How were my parents to know that the evaluation was never completed? How can my parents protect my rights without constant intrusions into the realm of the sanctuary and domain of school bosses? Dr. Robinson has specific recommendations in his report concerning motivation and close structure and positive reinforcement. How were his recommendations implemented when my class was taken with me on numerous field trips? When my teacher implemented an intervention strategy which was purely negative: she "timed me out" for non-compliance with her requests? Did this action and inaction violate any of my federal rights? Some of the documents are located in App.V(D); others are in the record on appeal from the local hearing. O.R.C. 3323.05 and .08 are in App.V(A).
We attempted, unsuccessfully, to raise this issue at the time of the State Level Review in 1979. App.V(B).

4. In June 1977, Michael Chrin subjected me to a "group assessment." He did not tell my parents about it; nor did he provide them written Notice. Are they entitled to prior notice in order to enable them to protect my federal rights? The school and the state contend that the action was acceptable because the results were applied in a very specific way. My question is, How does anyone examining my file to verify compliance with the quirements of school law, and other law, of the actions and inactions of school officials responsible for my education, know what probative value such documents have? Why should Michael Chrin ever provide notice when he can accomplish his goal of deciding how to proceed to my detriment by violating not only my federal rights, but also those of my handicapped peers? Without notice provided my parents, how are they able to have misleading information amended or destroyed? What about the Buckley Amendment which is provided for in the Standards for due process and procedural safeguards, EDb-215-17? We attempted, unsuccessfully, to raise this issue at the time of the State Level Review in 79. Judge Aldrich upheld the District and the State because the results, according to self-serving testimony, were not used for educational decisions in my behalf. The law must be on my side.

5. In 1975, a clinical allergist, Dr. Theron Randolph in Chicago, determined that I had multiple food allergies, etc. that affected my adaptive behavior. Should this medical evaluation be reflected in the educational plan developed, implemented, and evaluated for me? Standard 3301-51-18 (C). R.C.O. 3323.1 (the definitions used in both chapters 3323. and 3321.); 3323.08. These are found in App.V(A). App.V(A) also contains the CARC v. ESSEX law suit wherein chapters 3323. and 3321. were upheld as not being repugnant to the Constitution and other federal laws. This suit is cited by Judge Aldrich whose decisions in this regard, was entirely upheld by the Sixth Circuit Court of Appeals in this case. We attempted, unsuccessfully, to address this issue at the time of the State Level Review in 1979.

6. Based upon the record of the actions and inactions of the District and State in my behalf, and based upon my identified and assessed needs as documented in App.V(D) and App.V(E), am I entitled to redress from the District and from the State? I was never determined, by the proper authorities, to be incapable of profiting substantially from further instruction per R.C.O. 3321.05. Legally, am I not rightfully within the Kent City School District's responsibility? Do my needs dictate an extended school day to teach me self-help skills in my apartment? Do my needs dictate occupational therapy services on an ongoing basis to teach me manipulating fasteners on clothing, to take a bath and dress independent from my parents or teacher? Should this type of instruction not be provided to me in my apartment where I need to use it, based upon the opinions of Lou Brown, Alison Ford, and Anne Donnellen? Based upon the Report by Lou Brown and Alison Ford, and based upon my needs, am I entitled to programming on an extended year basis? How much should the school year be extended for me? Should I have the opportunity to residential-type programming on a twenty-four hour basis and year-round? Do I have the right to live in my apartment instead of being moved away from my environs in order to learn the skills first? Would it not be more feasible and less expensive for Kent and Ohio to provide a trained teacher with properly qualified supervision of

this trained teacher in my apartment and community where I live and plan to continue to live, since my family is here? Based upon the Brown Report, the expert testimony in my behalf, do my needs dictate comprehensive vocational education rather than pre-academics? Do I have the right to learn to live, to shop, to work, to access community life?

7. Under the federal laws, P.L.93-380 and 94-142, as well as P.L.93-112 as amended by P.L.93-516, a person must be properly evaluated and diagnosed according to procedural safeguards. How did my District implement these laws in my behalf without the required evaluations in compliance with 20 USC 1401 et seq.? How did the District implement 29 USC 794 with the amended Section 706 concerning defintions? Or their accompanying Rules and Regulations, 45 CFR 121a.532 and .534? Or, 45 CFR 84.33, 84.35, 84.36, 84.37?

8. Under these federal laws, including 20 USC 1401 et seq., how did the State of Ohio implement these procedural safeguards for me, when the case was placed at their door step in 1979? How did the State of Ohio implement 20 USC 1412 (6) in my behalf?

9. Based upon the record, is it not a fact that the District and the State joined forces against me? Am I entiled to redress under 29 USC 794?

10. Based upon the record, am I entitled to redress under 42 USC 1983?

11. Have my rights to equal protection under the law been violated by the District? (Constitution)

12. Have my rights to equal protection under the law been violated by the State of Ohio? (Constitution)

13. Have my rights to due process been violated by the District? (Constitution)

14. Have my rights to due process been violated by the State?

15. Am I entitled to redress in the form of compensatory appropriate education? Based upon the record, and the applicable law of State and Federal, how many years of compensatory education am I entitled to?

16. Are there any provisions to insure the District and State provide me with the type and degree of education I hope to receive as a result of this very difficult litigation?

Rule 15.1.(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in this Court contains the names of all such parties:

Plaintiffs-Appellants, Cross-Appellees:	Thomas Matthias Rettig, handicapped citizen Eva O. Rettig as his mother
Defendant-Appellee, Cross-Appellant:	Kent City School District/ Board of Education
Defendants-Appellees:	Kenneth Cardinal and Donna Lightel, former and present superintendent of District in his/her official capacity Michael Chrin, in his official capacity as Director of Child Study and Special Education for District
Defendants-Appellees:	State Board of Education of Ohio Franklin B. Walter, in his official capacity as Superintendent of Public Instruction for the State of Ohio

Amicus Curiae on issue attorneys fees on behalf of appellants. The attorneys for the Amicus Curiae are the former counsel of Thomas M. Rettig for the Independent Hearing Officer's Hearing (14 volumes of transcripts together with Rettig Exhibits 1-67 inclusive, Board of Education Exhibits A-Z, AA-ZZ and AAA-HHH, all inclusive, and Hearing Officer Exhibits 1 and 2.)
They represented both Thomas M. Rettig and his mother in the proceedings at the District Court level.
At the conclusion of those proceedings, these attorneys were fired by the Rettigs.
They then petitioned the Court of Appeals to be permitted to argue on the issue of attorneys fees/costs incurred by the plaintiffs in the hearings below. (District Court and Adm. Hearg.) Thomas M. Rettig no longer considers these attorneys his representatives. If they were a party in the court below, they are not now a party. Thomas M. Rettig comes to this Supreme Court without an attorney. He comes by and through his mother.

Rule 15.1.(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below:

The reports of the Courts below are provided in Appendix I. They are denying the requests for intervention of different kinds. Some of the attempts made by the plaintiffs are found in App.V(C).

The reports of the administrative agency are contained in Appendix II.

Several of the attempts made by the Rettigs in behalf of Tom are found in Appendix V(B). Not included in this Appendix is the 202-page volume of objections to the Report and Recommendations of the referee appointed by Franklin Walter to review the Decison of the appointed independent hearing officer. It is contained in the administrative record.

None of the reports, orders, etc. cite the Kent City School District for not having a multi-factored evaluation as required by State and Federal laws for special education and related services. Neither do any of them cite Kent for not providing prior notice to Tom or his parents for evaluations such as the one forced upon Thomas by Michael Chrin in 1977. It is found in Appendix V(D).

Judge Aldrich knew this fact; yet she did not order an evaluation until August 25, 1981. She apparently excused Michael Chrin for evaluating all handicapped students without informing any of the parents.

The District submitted its "bastard" evaluation to Judge Aldrich. On its face it is obviously inappropriate: no mention is made to any diagnosis, nor to any medical evaluation. It is in Appendix V(C). The State of Ohio Board of Education dismissed the request of the parent to challenge the evaluation on the basis of the instruments used an on the basis of the lack of qualifications of the personnel who evaluated Tom; and those who teach Tom; and those who supervise the instruction, if that is what Tom receives from his school bosses.

Rule 15.1.(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked, showing:

(i) The nature of the proceeding and, if the appeal is from a federal court, the statutory basis for federal jurisdiction.

At the regular meeting of the Kent Board of Education on February 27, 1978, Eva Rettig formally requested an Impartial Due Process Hearing at the conclusion of her formal presentation of complaints concerning the evaluation and placement of Thomas Rettig by the Kent City School District. This presentation took ninety minutes. The Board of Education of the Kent City School District took no action at that time; nor did it resolve to take some in the future. See Board Exhibit BBB; Administrative Record.

The verbal yet formal request was reduced to writing and addressed jointly to the superintendent of instruction and to the president of the Board of Education of the Kent Public Schools and is dated February 28, 1978 (same exhibit referred to above.)

> I hereby formally request again an impartial due process hearing regarding the provision of free appropriate education in the least restrictive placement of my son Thomas M. Rettig.
>
> I am dissatisfied with my son's education as it is presently provided.
>
> I respectfully request a copy of each page and of every page, note, entry, etc. of <u>all</u> school records regarding my son. I am prepared to pay for the actual cost.
>
> In view of the fact that I have been very reasonable and patient in reaching a final decision in the matter, I ask the Kent Schools to move as quickly as possible. The child is 13 years old and has needed more help from the time he was born with early infantile autism.

Eva Rettig received none of the records she requested until she hired an attorney for Thomas. The District, even then, had withheld the letter which Michael Chrin had written to Cleveland Metropolitan General Hospital requesting a diagnosis for Thomas. The District had also withheld the copy of the Application for the Legal Dismissal of Thomas Rettig from School Attendance. When Eva Rettig succeeded in searching and comparing each page constituting the morass of inappropriate "documents" in lieu of legal documents in the file kept by Michael Chrin on Thomas Rettig, those two items turned up. The Application was never signed by the then superintendent of the District, Robert Stanton. Therefore, it could not be filed with the State of Ohio as required by Board Standard EDb-215-13 promulgated and adopted by the State Board of

Education in August of 1966 and in effect until its revision by this authority in 1973. Thomas was excluded without benefit of due process of law as provided in this Standard, and the Statute. The District elected to refuse a due process hearing to Eva Rettig. Instead, the State Board of Education of Ohio appointed its Independent Hearing Officer, David Freed, to review the placement decision which had been made of Thomas Rettig, and those placement decisions affirming the original decision to withhold due process from the handicapped child. This Hearing Officer required the parents to sign a waiver of their right to a due process hearing to which they were entitled under P.L.94-142 and Ohio Revised Code Section 3323.05. He did this by ordering the attorney, whom the Rettigs were forced to engage before any semblance of "due process" would be provided for the child, to prepare a waiver for them to sign which waiver had the effect of stripping not only the parents of their guaranteed right to a due process hearing, but stripping the handicapped child of his right to a free appropriate public education as well. As "independent hearing officer" he obviously placed his decision as flying in the face of the specific requirements concerning eligibility for related services based upon a legal evaluation of this human being and his placement by the District based upon this legally required evaluation before teaching is to begin. He independently and arbitrarily decided that the Special Education Standards adopted and/or revised by the State Board of Education were not promulgated under Section 3323.011 of the Revised Code of Ohio. This "wisdom" permitted David Freed to conclude that no diagnosis was required as a basis. He also, in this arbitrary fashion, decided that no prior notice need be served upon the Rettigs at those times where Michael Chrin personally administers individual psychological tests and then writes an evaluation and classification on each child which evaluation he places into the file of each child, and which he also submits to the State Department of Education. With these strokes of genius, David Freed effectively did away with the due process rights of handicapped children and their parents, including Thomas M. Rettig and his parents.

Eva Rettig appealed to the Ohio State Board of Education which is ultimately responsible for the education of the child.

Franklin Walter, the State Superintendent for Public Education of Ohio, appointed Referee Clark to provide an independent review of the procedures employed by State-appointed Independent Hearing Officer Freed. He upheld Freed in each and every respect and refused to convene an appropriate hearing accoording to Chapter 119 of the Administrative Code of Ohio whereby the missing documents and required policies and procedures concerning the implementation of the present State Statute relative to special education could have been compelled of the District.

Objections to the Report and Recommendations of Clark were filed by the Rettigs. The State Board of Education instructed Franklin Walter to prepare a report of the 121-page document submitted by the Rettigs.

Franklin Walter advised the State Board that the State Board was not required to go beyond the stipulated issues which were arrived at without Eva Rettig due to the waiver she had to sign for Freed. He did not point out for the State Board that the mother objected to both Freed and Clark because they held that no diagnosis was necessary for the child to determine eligibility for, and placement into appropriate services based upon the required evaluation. The parents should be provided prior notice before any kind of evaluation activities were to be carried out on Thomas Rettig, was another objection raised. There were numerous instances cited of specific violations of procedural rights of Thomas by his District. However, no due process hearing, meeting the requirements of 20 USC 1415.(2)(d) was provided to the Rettigs, neither locally nor at the State level review. This is also a violation of the Revised Code of Ohio, Section 3323.05 and the Standard promulgated underneath this State Statute, EDb-215-17 (now codified at 3301-51-16 Administrative Code of Ohio).

Eva Rettig appeared before the Ohio State Board of Education, as did Kenneth Cardinal, the Kent superintendent. The Ohio State Board of Education adopted a resolution which essentially contradicted itself: it both affirmed Freed and Clark, and Walter,

while "offering assistance to the District" to develop an individualized education plan for Thomas. The State Board did not set any time lines, nor did it provide the procedures which the State administration was to employ in the implementation of this "mandate."

While the Rettigs actively pursued the offer, they filed their original complaint on November 30, 1979 against the Kent City School District. When it became more and more apparent that no due process and procedural safeguards were going to be afforded to the Rettigs, they amended their complaint, on December 13, 1979, and naming four new defendants, including the State Board of Education, they invoked the federal Courts' jurisdiction under the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. 1981 and 1983. The initial complaint invoked federal jurisdiction under 20 USC 1415.(2) which provides for a judicial review of the the administrative layer of hearing and state level review. Original jurisdiction is conferred by this Statute, without regard to the amount in controversy, upon the District Courts of the United States. (20 USC 1415 (e)(4). 539 F.Supp.768 (1981) RETTIG v. KENT CITY SCHOOL DISTRICT

(p. 772): "Court has limited this action to a review of the issues raised by agreement of the parties to the administrative hearing and the additional claims of unconstitutional denials of due process and equal protection, together with claims of State violations of the EHA. Specifically, those issues are:

I. Plaintiffs' allegation that the refusal to permit Thomas Rettig to enroll in the Kent City School District in 1971 violated his rights under the due process and equal protection clauses of the United States Constitution.

II. Plaintiffs' allegation that defendants failed to provide a free and appropriate education for Thomas Rettig, in violation of the EHA:

A. The failure to provide Thomas Rettig with a twelve-month program of special education and related services;
B. The failure to provide in-service training on effective methods of teaching autistic children;
C. The failure to provide a multi-factored evaluation of Thomas Rettig;
D. The failure to provide nonacademic and extracurricular services and activities in such a manner as to afford Thomas Rettig an equal opportunity for participation in such services and activities;
E. The failure to provide occupational therapy services to Thomas Rettig.

III. Plaintiff's allegation that the State Board of Education failed to monitor and assure compliance with the law by the special education programs offered to Thomas Rettig by the Kent City School District.

IV. Plaintiffs' allegation that the State standards relating to the issuance of final orders in an administrative appeal violate the EHA on their face and in their application.

The District Court apparently abused its discretion when it denied Plaintiffs' request for a multi-factored evaluation at the time of the TRO hearing concerning summer school for Thomas Rettig. The Sixth Circuit upheld.

The District Court apparently abused its discretion when it denied Plaintiffs' request to amend their complaint to include the two school years that had lapsed since the state level review; school years 1979-80 and 80-81. She required exhaustion of administrative remedies under 20 USC 1415.(e). However, the District Court did not afford the plaintiffs their right under 20 USC 1415.(e)(2) which provides:

> ....In any action brought under this paragraph the court shall receive the records of the administrative proceedings shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

The District Court permitted only supplemental testimony regarding issue I concerning the unconstitutional and illegal exclusion. She did not provide an opportunity to present the evidence by the plaintiffs concerning school years 79-80 and 80-81.

Furthermore, she abused her discretion when she apparently did not base her decision on the overwhelming documentation concerning the identified needs of Thomas Rettig as contained in the administrative record which she received, and in the testimony and exhibits accumulated in her Court at the times of the TRO hearing, and at the trial on the merits. No substance resulted for Thomas Rettig. She did not provide any opinion on the basis of Section 504 of P.L.93-112, nor on any other federal and state statutes, nor under the Constitution to afford relief for Thomas Rettig. None of these require exhaustion of administrative remedies; do they? The Sixth Circuit Court upheld the District Court in nearly all respects. It afforded no tangible relief to Thomas Rettig whatsoever. The intangible relief is his right to appeal to the Supreme Court for a vindication of his right to due process and procedural safeguards in the provision of his free appropriate public education. He needs the substance provided and compensated.

In addition to invoking the appellate jurisdiction of the Supreme Court under the Statutes cited above, and under the Fourteenth Amendment's guarantees to due process remediable under 42 U.S.C. 1981 and 1983, Thomas Rettig further invokes the appellate jurisdiction of the Supreme Court under 28 USC 1254 (2) which provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State Statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented.

The right of Thomas Rettig to equal protection of his right to free appropriate public education is primary and basically arises under the Ohio statutes themselves. Those are the compulsory attendance laws and laws for special education enacted by the Ohio General Assembly and in effect during the time this law suit embraces: Chapter 3321. Ohio Revised Code; and chapter 3313 concerning free schooling for resident children who are within the compulsory attendance laws together with chapter 3323. special education and related services for handicapped children who are within the compulsory attendance laws.

The right of Thomas Rettig to due process in the classification procedures for the determination of the education he is to receive, arises under the Standards or regulations adopted under these statutes.

While the statutes, as in effect in 1973, were upheld on their facial constitutionality in 1976 in Cuyahoga County Ass'n for Retarded Children, etc. v. Essex, 411 F.Supp.46 (1976) by the three-judge panel, the standards or regulations promulgated under them, were found in violation of the Fourteenth Amendment. The grounds were cited as deficient in not containing proper provisions regarding notice, opportunity for review of material on which proposed action thereunder was to be taken, opportunity for input by persons affected, and guarantees that relevant material would be before person charged with responsibility for final decision must be supplemented to afford minimum due process rights. (page 48; paragraph 15.)

The District Court dealt with the CARC suit; and the Sixth Circuit found her opinion not clearly erroenous. A copy of 411 F.Supp. 46 (1976) is provided in Appendix V(A). The Court in that suit held that, children, who had not been excluded according to the provisions of the Statute itself, Revised Code of Ohio 3323.05, were entitled to the same opportunities as all children of school age in Ohio are entitled concerning the expenditure of state and local funds for programs, facilities, and qualified teachers supervised by qualified and certified teachers. The Court said it was not the level of I.Q. that determined whether or not a child had the right to be educated in school buildings with his age peers - albeit in a special class, of course - rather it was the legal determination that the child was incapable to learn from special education in classes for which the Ohio General Assembly kept appropriating funds to be used by local school districts in conjunction with the funds locally provided for by the taxpayers. This Court is respectfully requested to review the record to enable it to intervene in behalf of Thomas Rettig with an appropriate Order for compensatory education upon the local and state education agencies.

Thomas Rettig has never been so determined by law.

Rule 15.1.(e).(ii)

Date of entry of judgment: Filed November 8, 1983

Motion for Rehearing denied: Filed January 3, 1984.

Motion for Reconsideration denied: Filed February 7, 1984.

Notice of Appeal: Filed February 29, 1984 and received by

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT: March 5,1984

Rule 15.1.(e).(iii) The statutory provision believed to confer jurisdiction of the appeal on this Court, and, if deemed necessary, the cases believed to sustain jurisdiction.

28 U.S.C. 1254 (2):

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented."

Cuyahoga County Association for Retarded Children, etc. v. Essex. United States District Court, N.D. Ohio, E.D. 411 F.Supp.46 (1976)

Thomas M. Rettig, et al. v. Kent City School District. United States District Court, N.D. Ohio, E.D. 539 F.Supp.768 (1981) upheld by Sixth Circuit Court of Appeals, November 8, 1983.

Rule 15.1.(f). The constitutional provisions, treaties, statutes, ordinances, and regulations that the case involves. Their citations are listed here; their verbatim text is contained in the Appendix (v).

Amendment V to the U.S. Constitution

Amendment XIV to the U.S. Constitution

42 U.S.C.A. 1983, 1988

29 U.S.C. 794 as amended by P.L. 93-516 in 1974

88 STAT 582 (amendment to P.L. 91-230 of 1970)

20 U.S.C. 821 (P.L. 93-380 of 1974), 88 STAT. 484

20 U.S.C. 1401 (P.L. 94-142 of 1975);1401 et seq.

PART 84 -- Rules and Regulations implementing Section 504 as amd.
45 C.F.R. Federal Register, Vol. 42, NO.86, p.22676

PART 121a -- Rules and Regulations to implement Assistance to States for the Education of Handicapped Children
45 C.F.R. Federal Register, Vol. 42, NO.163, p.42474

REVISED CODE OF OHIO, chapters 3321. and 3323.

STANDARDS of the Ohio State Board of Education: 1966, 1973, 1976, 1977.

Rule 15.1.(g) A concise statement of the case containing the facts material to consideration of the questions presented

Judge Aldrich set out the facts of the case. She made some errors which are pointed out by Eva Rettig in her Brief to the Sixth Circuit.

539 F.Supp. 768(1981) RETTIG v. KENT CITY SCHOOL DISTRICT is found in Appendix (I). As is also the Opinion filed by the Sixth Circuit. The Brief of Eva Rettig which sought to correct these errors in fact because they were not supported by the record, is found in Appendix V(C).

I. Period 1970 to "admission" in 1974 Facts

Under the provisions of R.C.O. 3323.01, the District received funds from the State of Ohio for special education units to serve children of the age of five or older who had been identified as handicapped. Michael Chrin was the Director of Child Study and Special Education for the District in this time period.

R.C.O. 3323.01 is found in Appendix V(A) p.21.

Standard EDb-215-07, 09 are found on pages 26 - 30.

In 1970, Michael Chrin identified Tom Rettig handicapped. He himself evaluated the child. EDb-215-07(A)(6) on p.28. EDb-215-09(A)(2) on p. 27; 09(A)(4)(a) on p. 27.

He did not assign Tom to another psychologist. He did not assign Tom to the class for slow learning children. 07(A)(6).

The Kent City School District had no report prepared to justify its decision to refuse admission of Tom Rettig in 1970.

In 1971, under the provisions of R.C.O. 3321., Tom had become amenible to the compulsory attendance laws of the State of Ohio. School Psychologist Irvin prepared a report of her evaluation of Tom. R.C.O. 3321. in Appendix V(A)p.19; 09(A)(2)(b) and (5)(e,f); her report is located in Appendix V(D).

This school psychologist prepared the E-1 form. Michael Chrin had the responsibility to assign Tom to an appropriate special education unit. R.C.O. 3321.05. 07(A)(6); 07(B)(2);09(A)(5)(e)(f); Edb-215-13.

Michael Chrin did not assign Tom Rettig to any other psychologist in 1971. 07(A)(6) p. 28; 07(B) p.28.

The E-1 Form required for legal dismissal was never signed

by any local school official. Yet Tom was refused admission. Michael Chrin did not assign Tom to a class for slow learning children. 07; 13.

In May 1972, Michael Chrin wrote to Cleve Metro Gen Hosp. This proves that he had first hand knowledge of the fact that the parents wanted their son enrolled in the special class. Appendix V(D). Yet Tom spent the year in an inappropriate nursery school in Akron, which required the mother to drive there and to stay for the two hours or less that Tom was there. Edb-215-13; 07; R.C.O. 3321.07 on requirements for child not in public school.

In May 1972, Michael Chrin requested medical evaluation to be done on Tom by the Cleve Metro Gen Hosp. Appendix V(D). The evidence shows that the child's father gave his permission to the hospital for the release of the diagnosis to the Kent School Psychologist. The evidence shows that the information was sent. On the stand, Mr. Chrin testified he never received it. But the father testified after Chrin that the two did indeed discuss the evaluation; Chrin never said anything further on the subject. The evaluation is located in Appendix V(D).

The dual diagnosis required that both aspects be addressed in the education of Tom Rettig. Tom was in a private special education school without any contact to non-handicapped peers for the school year 1972-73; as well as for the better part of school year 73-74. The private school teacher tied Tom to a fire extinguisher mounted outside the classroom because of his hyperactivity and other inappropriate behaviors which she was not equipped to handle. Tom was again hospitalized in January 1974. The results are found in Appendix V(D).

The parents did not see any of the two evaluations done on their son until after they had applied to Michael Chrin, again, to have Tom enrolled. Their letter of application provides the type of placement Tom needed at the time based upon the second hospitalization: residential placement for behavior modification. The Director of Child Study and Special Education did not provide for any evaluation of Tom at the time of placement. He placed Tom into a class under EDb-215-04. Appendix V (A) pp.33-37. See EDb-215-04 (B)(C)(D).; EDb-215-06; Appendix V(A) pp. 7-14.

It was the pre-placement multi-factored evaluation which is required under EDb-215-04 that was not performed on Tom, and that was not required, according to Independent Hearing Officer Freed. See Hearing Officer's Decision, pp. 16 ff. in Appendix II. Upheld by Referee Clark on p. 10 in Appendix II; and ultimately upheld by the Ohio SBOE; 88 STAT. 582 in Appendix V(A) p.3; 20 USC 1401 (17) in Appendix V(A) p.4; 20 USC 1412 Sec. 612 (6) on p. 5; 20 USC 1414 (a)(5) p.6; 20 USC 1414(b) p. 6; 20 USC 1415 p. 7; 45CFR 84. on pp. 8-10; 45 CFR 121a. on pp. 11 - 18; Revised Code of Ohio 3321. on pp. 19 and 20; Revised Code of Ohio 3323. on pp.21 - 25; State Board of Education Program Standards, 1966 on pp. 26 - 32; Ohio RevisedCode 3323.011 on pp. 33 - 42; State Board of Education Standards for Due Process and Procedural Safeguards for Handicapped Children and Youth effective August 28, 1976 on pp. 43 - 44; Standards for Identification, Standards for Multi-factored Evaluation, Least Restrictive Placement and Individualized Educational Plan, Standards for Related Services on pp. 45 - 49. See also Appendix V(D) concerning the file on Thomas Rettig in conjunction with the Statutes and Standards and Rules and Reg's. The Kent School District's SOP 04 IEPPs are not included in the Appendix of Tom Rettig. They were found inappropriate by the experts that testified in his behalf. The parent requests for programming are not included either; they were not included in the IEPPs anyway.

See further Appendix V(E) for the definition of the syndrome of autism; and for the independent educational evaluation of those IEPPs and other "documents." The qualifications of the two professors who prepared the report are also provided in Appendix V(E)

Rule 15.1.(h) A statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

It is the belief of the student that enough has been argued, said, and written. He has derived no benefit yet. The record shows that no multi-factored assessment procedure was administered to the child at any time in compliance with the requirements of the school laws. There are no properly qualified teachers to teach by State Standards; the student was removed to a ghetto for handicapped children and housed on the campus of Kent State University entirely separate from the buildings owned by the Kent Board of Education. The record shows that the KentCity School District provides no notice to parents prior to subjecting all handicapped students to a "group assessment" for classification purposes. The record contains not one copy of any required prepared report from the placement and review committee to review any kind of evaluation of this human being, according to Standard EDb-215-17, or 3301-51-16, or 3301-51-18. Neither does the superintendent require one to be written; he testified so. There is no protection in evaluation procedures. Parents are not permitted to challenge these actions. Parents must hire an attorney in order to have any type of hearing. The attorney decides upon the exhibits and upon the questions that will constitute the record. On paper, the State of Ohio requires compliance with the laws and its standards. In the case of this human being, however, the State of Ohio chose to aid and abett Kent instead of requiring compliance of the District with the State Standards concerning due process and procedural rights in the realm of eligibility for services, evaluation of needs, placement based upon those needs with the necessary services, and compliance with the mandated re-evaluation.

The Statutes and their regs and Standards are provided for the convenience of the Court in Appendix V(A). If the Court needs more information than that provided, would it please so indicate.

Rule 15.1.(i) If the appeal is from a decree of a district court granting or denying a preliminary injunction, a showing of the matters in which it is contended that the Court has abused its discretion by such action.

Judge Aldrich refused the request for preliminary injunction of July 24, 1980. She chose to keep our plea for court intervention entirely separate from the case on the merits which was very old and very cold when it reached her in 1981. Two years had gone by and the District had chosen to restrict the contacts with non-handicapped peers in the school setting when compared with what was testified to at the hearing by teachers and others. She apparently ignored the child;how could she have done nothing for him in light of the comprehensive evaluation report submitted to her? It is found in Appendix V(E).

She turned town our pleading for help in the implementation of her Order because of lack of jurisdiction over the case. The parents filed a new suit under Section 504 against the teacher and the district; she dismissed it for lack of exhaustion of administrative remedies. These plaintiffs have not found the location in the Statute, nor in the rules and regulations, that make that requirement. The pleading is found in Appendix V(C).

On the Appellate Court level, the parents sought to correct the factual mistakes the District Court had made. It upheld all of the mistakes. The Rettig Brief to the Sixth Circuit was written by Eva Rettig; it is located in Appendix V(C).

Further, the Rettigs challenged the the right of the Kent City School District to appeal an issue to the Sixth Circuit under 20 USC 1415 when this Statute is specifically intended for a party aggrieved by the State Board of Education Final Order. Not only did the Court hear their appeal; it remanded the issue back to Cleveland where more time was taken. No Court has helped Thomas Rettig yet. Will the Supreme Court help him?
Judge Aldrich, on remand, upheld her earlier ruling on the issue of equal opportunity for extra-curricular activities for Tom. The District appealed again; the Rettigs cross-appealed because they believe that they have a right to redress under Section 504 and other Statutes. Now the District has filed a Motion to have the Cross-Appeal dismissed. It is big game to these defendants.

This Jurisdictional Statement and accompanying Appendices are being submitted to this Honorable Court with the fervent prayer that Thomas will receive compensatory education as this Court deems just and fair.

Respectfully submitted,

Eva Rettig

(Mrs.) Eva Rettig
586 Francis Street
Kent, Ohio 44240

(216) 678-0988

FOR THOMAS RETTIG

RULE 15.1. (1) IF THE APPEAL IS FROM A DECREE OF A DISTRICT COURT GRANTING OR DENYING A PRELIMINARY INJUNCTION, A SHOWING OF THE MATTERS IN WHICH IT IS CONTENDED THAT THE COURT HAS ABUSED ITS DISCRETION BY SUCH ACTION...

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FILED

United States Court of Appeals

FOR THE SIXTH CIRCUIT

FILED
1984 FEB 22 AM 11:10
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

NOV 8 1983
JOHN P. HEHMAN, Clerk

No. 81-3586/81-3595

THOMAS M. RETTIG, ET AL.,

Platinffs-Appellants,
Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT,

Defendant-Appellee,
Cross-Appellant,

KENNETH CARDINAL, ET AL.,

Defendants-Appellees.

Before: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed in part, vacated in part and remanded to the district court not inconsistent with the opinion of this Court.

No costs taxed. Each party will bear his own costs on this appeal.

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: James S. Gallas, Clerk
U. S. District Court
Northern District of Ohio

By: Linda J Paynter
Deputy Clerk

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate: February 15, 1984

A True Copy.

COSTS: None

Filing fee.....$
Printing.....$

Total.....$

Attest:

Mary Lou Petty
Deputy Clerk

R. R.

6CA-80
11/82

III 2

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JAN 3 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,

Plaintiffs-Appellants,
Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT,

Defendant-Appellee,
Cross-Appellant,

and

KENNETH CARDINAL, et al.,

Defendants-Appellees.

ORDER

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Upon due consideration, the Court concludes that rehearing in this matter is not warranted and, accordingly, the appellants' motion is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

*Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

FILED III 3

FEB 7 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,	)	
	)	
Plaintiffs-Appellants, Cross-Appellees,	)	
	)	
v.	)	**ORDER**
	)	
KENT CITY SCHOOL DISTRICT,	)	
	)	
Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Appellant's motion for reconsideration of the Court's order denying rehearing is hereby denied.

ENTERED BY ORDER OF THE COURT

John P Hehman, /ds
CLERK

*Hon. John Feikens, Chief Judge, United States District Court for the Eastern District of Michigan, sitting by designation and assignment.

III 4

FILED

1984 JAN 26 PM 2:31

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS M. RETTIG, et al.	)	Civil Action No. C79-2234
Plaintiffs	)	
vs.	)	MEMORANDUM AND ORDER
KENT CITY SCHOOL DISTRICT, et al.	)	
Defendants	)	

ALDRICH, J.

This matter came before the Court for judicial review of administrative hearings held by the State of Ohio concerning the education of Thomas M. Rettig, a handicapped child, as authorized by provisions of the Education for All Handicapped Children Act of 1975 ("Act"), 20 U.S.C. §1401 et seq. After a trial to the bench, the Court issued an Opinion and Order on August 25, 1981, in which it ordered the Kent City School District ("District") to make certain changes in its Individualized Education Program ("IEP") for Rettig for the 1981-82 academic year. The complicated and unhappy history of this dispute is set forth in that opinion. Rettig v. Kent City School District, 539 F.Supp. 768 (N.D. Ohio 1981).

Both parties appealed to the United States Court of Appeals for the Sixth Circuit. Affirming this Court on all other issues, the three-judge panel remanded for further consideration only the question of whether the Court's order that the District provide Rettig with at least one hour of

extracurricular activities per week remained appropriate in light of Board of Education of the Hendrick Hudson Central School District v. Rowley, ___ U.S. ___, 102 S.Ct. 3034 (1982). See Rettig v. Kent City School District, ___ F.2d ___ (6th Cir. Nov. 8, 1983).

Upon consideration, the Court finds that the relief granted in its original opinion comports with the standards set forth in Rowley. In addition, the Court finds that any alteration of the relief provided in the Opinion would be improper, since the Court's decision concerned a subject matter — the 1981-82 IEP — which is now moot.

I. ROWLEY ANALYSIS

The Court's order that the District provide Rettig with extracurricular activities rested on a regulation promulgated by the Department of Health and Human Services pursuant to the Act. Title 34 U.S.C. §300.306[1] provides:

> (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary for participation in those services and activities.

The Court found that

> . . .the education that Tom received between 1976 and 1979 was primarily a classroom experience. In conjunction with the classroom experience, the Kent City School District did not provide any after school activities in which a child like Thomas Rettig might participate, although the School District did provide such activities for its non-handicapped students. It

[1] At the time of the Court's opinion, the same regulation was codified at 45 C.F.R. §121a.306.

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therefore failed to provide after school activities on an equal basis, and has been in violation of [the regulation].

539 F.Supp. at 780.

Neither the regulation nor this Court's interpretation of it violate the letter or spirit of Rowley. Reversing a district court order requiring that a school district provide a sign-language interpreter for a deaf student, Amy Rowley, the Supreme Court rejected her

> . . .contan[tion] that "the goal of the Act is to provide each handicapped child with an equal educational opportunity." . . .[T]he requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential "commensurate with the opportunity provided other children." . . .Congress sought "to provide assistance to the States in carrying out their responsibilities under . . . the Constitution of the United States to provide equal protection of the laws." . . . But we do not think that such statements imply a congressional intent to achieve strict equality of opportunity or services.
>
> . . .The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of "free appropriate public education"; to require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go. Thus to speak in terms of "equal" services in one instance gives less than what is required by the Act and in another instance more. The theme of the Act is "free appropriate public education," a phrase which is too complex to be captured by the word "equal" whether one is speaking of opportunities or services.

103 S.Ct. at 3046-47 (citations omitted).

The Court concluded:

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> . . .[T]he District Court found that the "evidence firmly establishes that Amy is receiving an 'adequate' education . . ." In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by the . . . school administrators to meet her eductional needs, the lower courts should not have concluded that the Act requires the provision of a sign-language interpreter.

Id. at 3052.

This Court's order concerning Rettig's extra-curricular activities does not violate Rowley. We did not read the requirement of 34 C.F.R. §300.306(a) that the District "afford handicapped children an equal opportunity for participation" to mandate the "strict equality of opportunity or services" eschewed by Rowley. Rather, this Court sought to rectify a situation in which the District had failed to "provide any after school activities in which a child like Thomas Rettig might participate . . ." Ordering the District to provide Rettig with at least one hour per week of extracurricular activities did not seek to force it to provide services "sufficient to maximize [Rettig's] potential "commensurate with the opportunity provided other children.'" 102 S.Ct. at 3046. The order simply sought to provide him with the "free appropriate public education" that is indisputably the subject matter of the Act. Id. at 3047.

This Court therefore determines that its order concerning Rettig's extracurricular activities was appropriate under the Act, the regulation, and Rowley.

II. MOOTNESS

Under Article III of the Constitution, this Court sits to decide "Cases" and "Controversies" and may not issue advisory opinions on abstract questions. The doctrine of "mootness", which prevents courts from hearing actions that no longer present a justiciable issue, has two aspects: "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969); see generally United States Parole Commission v. Geraghty, 445 U.S. 388, 396 (1980); DeFunis v. Odegaard, 416 U.S. 312 (1974).

This matter came before the Court for judicial review of administrative hearings concerning Rettig's IEP for the 1981-82 academic year. The controversy over that plan cannot be considered a "live" one. Indeed, to amend at this time the IEP for a school year long since concluded would be, as it were, the very essence of mootness.[2]

The Clerk is instructed to close the file to No. C79-2234.

IT IS SO ORDERED.

ANN ALDRICH
UNITED STATES DISTRICT JUDGE

[2]Rettig recently commenced a new action against the District challenging the education it has provided him in the school years since 1981-82. See Rettig v. Kent City School District, No. C83-2881 (N.D. Ohio filed July 15, 1983) (Lambros, J.).

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RECEIVED
MAR 5 1984
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83-6494

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG,
EVA O. RETTIG
Plaintiffs-Appellants
-vs-

KENT CITY SCHOOL DISTRICT
KENNETH CARDINAL/DONNA G. LIGHTEL
MICHAEL CHRIN
STATE BOARD OF EDUCATION OF OHIO
FRANKLIN B. WALTER
Defendants

CITATION #81-3586
#81-3595
District Court Docket # C79-2234

NOTICE OF APPEAL

Notice is hereby given that Thomas M. Rettig hereby appeals to the United States Supreme Court the Order entered on February 7, 1984 by the United States Court of Appeals for the Sixth Circuit:

APPELLANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING REHEARING IS HEREBY DENIED.

His appeal includes the following statutes: The Rehabilitation Act of 1973; The Civil Rights Act of 1871 (42 U.S.C. 1983); 28 U.S.C. 2201, 2202; 28 U.S.C. 1331; 28 U.S.C. 1343 (3); 28 U.S.C. 1652; The Education of the Handicapped Amendments of 1974 (P.L.93-380); The Education of All Handicapped Children Act of 1975 (P.L.94-142).

Eva O. Rettig

EVA O. RETTIG
586 Francis Street
Kent, Ohio 44240
(216) 678-0988

FOR PLAINTIFF-APPELLANT

AFFIDAVIT OF SERVICE: I, Eva O. Rettig, having first been duly sworn, say: All parties required to be served have been served as follows: A copy of the above Notice of Appeal was served upon Dennis Whalen, 135 Portage Trail, P.O.Box 8, Cuyahoga Falls, OH 44422; and upon Gary Brown, Asst. Atty.Gen., State Office Tower, 30 East Broad St., Columbus, OH 43215; and upon Clerk, U.S. District Court, ND-ED, Cleveland, OH 44114 by placing same in the regular U.S. Mail Service, postage prepaid, this 29th day of February 1984.

Eva O. Rettig
EVA O. RETTIG

Rebecca S. Jolliff
NOTARY PUBLIC REBECCA S. JOLLIFF
Notary Public, State of Ohio
My Commission Expires April 8, 1987

Date: February 29, 1984

IN THE UNITED STATES SUPREME COURT

ORIGINAL 83-6494

THOMAS M. RETTIG,

Plaintiff-Appellant

-vs-

KENT CITY SCHOOL DISTRICT, et al.

Defendants-Appellees

CASE NO. _____

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

RECEIVED
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SUPREME COURT, U.S.

Thomas M. Rettig respectfully requests permission of this Honorable Court to proceed on appeal in forma pauperis. He did not petition any lower courts.

Thomas M. Rettig is enrolled a handicapped student in the Kent City School District in Kent, Ohio.

On May 30, 1983, he reached the age of eighteen years. Since that time, he has been receiving support and maintenance not only from his parents, but also from the federal government in the form of supplemental security income.

Thomas was born with infantile autism, a severe childhood disorder. A Fact Sheet on Autism, published by the National Institute of Neurological and Communicative Disorders and Stroke, is attached to this Motion for the convenience of the Court. Because the kind of "education" he has been receiving from his District and State, Thomas is not now employable. Therefore, his income is very low.

In support of this Motion, Thomas M. Rettig attaches an Affidavit hereto.

Respectfully submitted,

Eva Rettig

EVA O. RETTIG
586 Francis St.
Kent, OH 44240
(216) 678-0988

For her son Thomas M. Rettig

AFFIDAVIT OF SERVICE: A copy of the above Motion and the attached Affidavit was served upon Dennis Whalen, 135 Portage Trail, P.O. Box 8, Cuyahoga Falls, Ohio 44222; and upon Gary Brown, Asst. Atty General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 by placing same in the regular U.S. Mail, postage prepaid, this 29th day of March 1984.

Eva O. Rettig
EVA O. RETTIG

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29
DAY OF March 19 84

_____ Commission Expires

RECEIVED
MAR 29 1984
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SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

83 6494

THOMAS M. RETTIG,
Plaintiff-Appellant
-vs-
KENT CITY SCHOOL DISTRICT, et al.
Defendants-Appellees

CASE NO. _____

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Thomas M. Rettig being first duly sworn, depose and say that I am the Petitioner in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are contained in the jurisdictional statement being filed together with this Affidavit and my Motion for Leave to Proceed on Appeal in Forma Pauperis.

1. Are you presently employed?

b. No. In the summer of 1982, I was employed through CETA and earned approximately two hundred dollars per month.

2. Have you received within the past twelve months any income from any business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

Yes. I rent an apartment to learn independent living skills because my school district refuses to provide these opportunities for me. The Social Security Administration deems that my parents provide me support and maintenance valued at approximately one hundred twenty-four dollars and sixty-six cents per month for the last ten months. Together with my sister's, my name is on a Certificate of Deposit. The interest on it, for purposes of SSI, is considered mine alone in the amount of about twenty dollars per month. In reality, my sister and I share it half and half. From the State of Ohio Department of Taxation, I received a voucher in the amount of one hundred twenty-five dollars to help pay the heat bills for my apartment.

3. Do you own any cash or checking or savings account?

Yes. I have a savings account at the Kent Credit Union.

The balance is twenty-four dollars and ten cents as of Jan. 30, 1984. I have some cash on hand from my SSI checks to pay for my lunch at school.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

   No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

   Nobody.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Thomas M. Rettig

THOMAS M. RETTIG

SUBSCRIBED AND SWORN TO before me this 29 day of March, 1984.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Edward H. Faichtl

Notary Public, D.C.
My Commission Expires
August 14, 1987

No. 83-6494

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

RECEIVED
MAY - 3 1984
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SUPREME COURT, U.S.

THOMAS M. RETTIG,

Petitioner

v.

THE KENT CITY SCHOOL DISTRICT, et al.

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

MOTION OF RESPONDENTS TO DISMISS OR AFFIRM

DENNIS M. WHALEN
Dennis M. Whalen Co., L.P.A.
135 Portage Trail, P. O. Box 8
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Telephone: (216) 929-4291

Counsel of Record for Respondents
Kent City School District,
Donna Lightel and Michael Chrin

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Counsel for Respondents Kent
City School District, Donna
Lightel and Michael Chrin

ANTHONY J. CELEBREZZE, JR.
Attorney General
GARY E. BROWN
Assistant Attorney General
State Office Tower, 16th Floor
30 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 466-8600

Counsel for Respondents State
Board of Education and
Franklin B. Walter

McDOWALL & WHALEN
ATTORNEYS AT LAW
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PHONE (216) 929-4291

INTRODUCTORY STATEMENT

On March 29, 1984, the Petitioner, Thomas M. Rettig (referred to hereinafter as "Petitioner"), caused this case to be docketed in this Court as an appeal. In the Petitioner's Jurisdictional Statement at page 35, it is alleged that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(2), which concerns an appeal by a party relying upon a state statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States. The Petitioner's reliance on this statute in the present case is clearly misplaced since the issues presented to the Court of Appeals did not concern the validity or constitutionality of a state statute.

However, the Respondents are aware that, pursuant to 28 U.S.C. §2103, if an appeal to this Court is improvidently taken from the decision of a United States Court of Appeals in a case where the proper mode of a review is by petition for certiorari, the papers whereupon the appeal is taken shall be regarded and acted on as a petition for writ of certiorari as if duly presented to the Court at the time the appeal was taken. The Respondent submits that the proper method of review in the present case is by petition for certiorari, the granting of which is a matter of judicial discretion. See, Sup. Ct. R. 17.1. Therefore, with the assumption that the Petitioner's pleadings will be acted on as a petition for certiorari, the Respondents respectfully submit for the Court's consideration this Motion to Dismiss or Affirm.

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ATTORNEYS AT LAW
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PHONE (216) 929-4291

QUESTION PRESENTED

Whether Respondent, Kent City School District, provided Petitioner with a free, appropriate public education and related services during the 1978-1979 school year in accordance with the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401, et seq.

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PHONE (. 16) 929-4291

LIST OF ALL PARTIES

Petitioner:

Thomas M. Rettig

Respondents:

Kent City School District
Dr. Donna Lightel (in her official capacity as Superintendent)
Michael Chrin (in his official capacity as Director of Child Study and Special Education)

State Board of Education of Ohio
Dr. Franklin B. Walter (in his official capacity as State Superintendent)

McDOWALL & WHALEN
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TABLE OF CONTENTS

	Page
Introductory Statement	i
Question Presented	ii
List of All Parties	iii
Table of Authorities	v
Opinions and Judgments Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4
Summary of Argument	7
Argument	8
Conclusion	12
Certificate of Service	13

Appendices:

A.	Decision of the United States Court of Appeals, Sixth Circuit, filed November 8, 1983	A-14
B.	Order of the United States Court of Appeals, Sixth Circuit, denying rehearing, January 3, 1984	B-16
C.	Order of the United States Court of Appeals, Sixth Circuit, denying reconsideration, February 7, 1984	C-20
D.	Decision of the United States District Court, August 25, 1981	D-21
E.	Correspondence from United States Court of Appeals, Sixth Circuit, to Petitioner, March 6, 1984	E-38
F.	The Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq.	P-39

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TABLE OF CONTENTS

	Page
Cases	
Boag v. MacDougall, 454 U.S. 364 (1982)	10
Board of Education of Rogers v. McCluskey, 458 U.S. 966 (1982)	10
Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982)	7,8,9
City of El Paso v. Simmons, 379 U.S. 497 (1965)	2
Rettig v. Kent City School District, 539 F. Supp. 768 (1981)	10
Rettig v. Kent City School District, 720 F. 2d 463 (1983)	6,9,10
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)	9
Springdale School District No. 50 of Washington County v. Grace, 693 F. 2d 41 (1982), cert. denied ___ U.S. ___, 103 S. Ct. 2086 (1983)	9
Statutes	
20 U.S.C. §1401, et seq.	3,8
20 U.S.C. §1415	4
20 U.S.C. §1415(e)(2)	5
28 U.S.C. §1254(2)	2
28 U.S.C. §2103	2
42 U.S.C. §1983	5
Ohio Revised Code §3323.05	4
Rules	
Sup. Ct. R. 17.1	i
Sup. Ct. R. 21.5	10

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OPINIONS AND JUDGMENTS BELOW

It is unclear from the copy of the pleadings which have been served upon the Respondents whether the Petitioner has included the complete text of the opinions rendered by the Courts below. Accordingly, the same have been appended to this Motion.

The opinion of the District Court is reported at 539 F. Supp. 768. The opinion of the Court of Appeals for the Sixth Circuit is reported at 720 F. 2d 463. In addition, on January 3, 1984, the Court of Appeals filed its Order denying the Petitioner's Motion for Rehearing, and on February 7, 1984, the Court entered its Order denying the Petitioner's Motion for Reconsideration of the Court's Order denying rehearing.

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JURISDICTION

As stated above, the Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1254(2). The Petitioner originally filed a Notice of Appeal in the United States Court of Appeals for the Sixth Circuit on or about February 29, 1984, but the same was returned by the Court with directions to proceed by way of a petition for writ of certiorari. A copy of this correspondence appears in the Appendix hereto. However, on March 29, 1984, the Petitioner filed a Jurisdictional Statement and other pleadings with this Court.

The Respondent submits that the provisions of 28 U.S.C. §1254(2) are not applicable to the present case. However, 28 U.S.C. §2103 requires the Court to treat the appeal papers filed by the Petitioner as a petition for certiorari. See, City of El Paso v. Simmons, 379 U.S. 497, 503 (1965). Therefore, the Respondent submits that this case is now before this Court upon a petition for a writ of certiorari.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq., which appears in the Appendix attached hereto.

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STATEMENT OF THE CASE

IMPARTIAL DUE PROCESS HEARING:

This matter began in February of 1978 when the parents of the Petitioner requested an Impartial Due Process Hearing pursuant to 20 U.S.C. §1415 questioning the quality of the special education being provided to their son by the Kent City School District. Prior to proceeding to a due process hearing, several attempts to conciliate and mediate a resolution were unsuccessful. After several conferences between counsel for the parties and the designated Hearing Officer, the first of fourteen (14) hearing sessions began on January 29, 1979, and concluded on April 4, 1979.

On April 30, 1979, the Impartial Hearing Officer issued a comprehensive opinion which concluded that the Kent City School District was providing a free and appropriate public education to the Petitioner.

APPEAL TO STATE BOARD OF EDUCATION:

The parents of the Petitioner elected to proceed to an appeal of the Impartial Hearing Officer's decision to the Ohio State Board of Education in accordance with Ohio Revised Code §3323.05. Pursuant to the state statute the appeal was referred to a Referee who received the written arguments of both parties. On September 28, 1979, the Referee submitted his report to the Ohio State Board of Education in which he recommended the issuance of a final order affirming the conclusion of the Impartial Hearing Officer that the Kent City School District was providing a free and appropriate public education to the Petitioner.

The parents of the Petitioner filed with the Ohio State Board of Education their objections to the Referee's report in the form of a document containing over two hundred (200) pages. After a review of the objections, the Ohio State Board of Educa-

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tion accepted the recommendations of the Referee and affirmed the decision of the Hearing Officer on November 13, 1979.

UNITED STATES DISTRICT COURT PROCEEDING:

Pursuant to the provisions of 20 U.S.C. §1415(e)(2), a complaint was filed on behalf of the Petitioner in the United States District Court for the Northern District of Ohio, Eastern Division, on November 30, 1979. On December 13, 1979, an amended complaint was filed which incorporated additional allegations of constitutional infringements under 42 U.S.C. §1983, and joined, as defendants, the Superintendent and the Director of Special Education of the Kent City School District, the State Board of Education of Ohio, and the State Superintendent. All additional defendants were sued in their official capacities. The District Court conducted two (2) days of hearings in August of 1980 upon the Petitioner's request for a preliminary injunction, which was denied, and then held three (3) days of hearings in May of 1981 on the merits of the case. The Court rendered its final order on August 25, 1981.

The District Court upheld the Impartial Hearing Officer's decision on the vast majority of issues presented for review. The Court did, however, order the Kent City School District to provide the Petitioner with at least one (1) hour per week of extracurricular activities. The Court also ordered the school district to conduct a multi-factored evaluation of the Petitioner for the purpose of preparing a new individualized education program (IEP) for the 1981-1982 school year. The record shows, however, that the school district had repeatedly attempted to obtain voluntary parental consent to perform such a multi-factored evaluation without success.

UNITED STATES COURT OF APPEALS PROCEEDINGS:

A Notice of Appeal from the decision of the District Court was filed in the United States Court of Appeals for the

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Sixth Circuit on behalf of the Petitioner on September 22, 1981. In addition, the Kent City School District filed a cross-appeal which challenged the District Court's decision that at least one (1) hour per week of extracurricular activities must be included in the future IEP developed for the Petitioner.

The Court of Appeals issued its decision on November 8, 1983, which affirmed the judgment of the District Court in all respects except that portion requiring the school district to provide extracurricular activities to the Petitioner which was vacated and remanded for further consideration. In rejecting the challenge to the educational program developed for the Petitioner, the Court of Appeals stated:

> In sum, however, the plaintiff's arguments merely reflect a difference of opinion as to the most effective teaching methods available to advance Thomas' education. Various experts testified as to an appropriate educational program for Thomas. The courts, however, are not free to choose between competing educational theories and impose that selection upon the school system.
>
> 720 F. 2d at 465-566

Therein lies the essence of this case.

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SUMMARY OF ARGUMENT

In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), this Court held that a handicapped child receives a free, appropriate public education pursuant to the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq., when he is being provided "personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction," and that the "primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs" is left to state and local educational agencies. The Court of Appeals correctly applied these standards in determining that the Kent City School District is providing the Petitioner with a free, appropriate public education within the meaning of the Act.

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ARGUMENT

In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), this Court reviewed for the first time the policies, procedures, and objectives of the Education for All Handicapped Children Act of 1975, 20 U.S.C. §1401 et seq. This Court held in Rowley that the requirement contained in the Act that a state provide specialized educational services to handicapped pupils generates "no additional requirement that the services so provided be sufficient to maximize each child's potential 'commensurate with the opportunity provided to other children.'" 458 U.S. at 198. This Court further concluded that "the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside," 458 U.S. at 192, but implicit in the congressional purpose "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." 458 U.S. at 200. Thus, this Court held that a state satisfies the Act's requirement of affording a handicapped child a free appropriate public education

> by providing personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

458 U.S. at 203-204

In addition, in Rowley this Court defined the responsibilities of the court in actions instituted pursuant to 20

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U.S.C. §1415(e)(2). This Court stated that

> [A] court's inquiry in suits brought under §1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.
>
> 458 U.S. at 206-207

Finally, this Court cautioned that "[i]n assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States." 458 U.S. at 207.

The case at bar, in essence, involves a choice between competing educational theories and teaching methods. As the Court of Appeals correctly pointed out, courts are not free to make such choices. 720 F. 2d at 466. This was reaffirmed by this Court in Rowley when it stated:

> We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." San Antonio Independent School Dist. v. Rodriguez, 411 U.S., at 42. We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States.
>
> 458 U.S. at 208

One must also be mindful that "the Act does not require States to make available the best possible option," Springdale School District No. 50 of Washington County v. Grace, 693 F. 2d 41, 43 (1982), cert. denied ___ U.S. ___, 103 S. Ct. 2086 (1983); rather, the primary issue is whether the IEP developed for the handicapped child is reasonably calculated to enable him or her to receive educational benefits. 693 F. 2d at 43.

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In the case at bar, the District Court specifically stated the following:

> This Court is unable to declare that the school system has failed Tom. The progress reports and the testimony of Tom's parents and teachers indicate that he has gained some social skills and some self-help skills...
>
> 539 F. Supp. at 778

In affirming this conclusion, the Court of Appeals stated:

> This Court is of the opinion, therefore, that the lower court was correct in refusing to interfere with the State's implementation of its educational program as it relates to Thomas. To the extent the plaintiffs requested the trial court to order the school district to include specific programs within Thomas' curriculum--for example, summer classes and continuous occupational therapy--this Court affirms the district court's denial of such relief inasmuch as the programs were not necessary to permit Thomas to benefit from his instruction.
>
> 720 F. 2d at 466

Thus, it is clear that the decision of the Court of Appeals is fundamentally correct, and that the result which was reached therein is consistent with this Court's decision in Rowley, supra. Accordingly, it should not be disturbed by this Court.

Additionally, the Respondents submit that this case does not present issues that are sufficiently important to warrant this Court's intervention. As Mr. Justice Stevens recently wrote in Board of Education of Rogers v. McCluskey, 458 U.S. 966, 971 (1982) (dissenting opinion):

> As JUSTICE REHNQUIST has reminded us, in "our zeal to provide 'equal justice under law,' we must never forget that this Court is not a forum for the correction of errors." Boag v. MacDougall, 454 U.S. 364, 367-368 (1982) (dissenting opinion). "To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved."

Finally, the Respondents direct the Court's attention to Sup. Ct. R. 21 governing the petition for certiorari. Specifically, Sup. Ct. R. 21.5 provides that the failure of the peti-

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tioner "to present with accuracy, clarity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition." The Respondent submits that the Petitioner has failed to comply with this standard in the case at bar, and accordingly, his petition should be denied.

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CONCLUSION

In light of the foregoing, it is apparent that the Court of Appeals correctly applied the directives given by this Court in Rowley, and that the Kent City School District was and is continuing to provide the Petitioner with a free, appropriate public education under the provisions of the Act.

The Respondents Kent City School District, Donna Lightel, Michael Chrin, State Board of Education of Ohio, and Franklin B. Walter, strongly urge this Court that Petitioner's request for jurisdiction be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Respondents to Dismiss or Affirm was served upon Eva O. Rettig, Mother of Thomas M. Rettig, 586 Francis Street, Kent, Ohio 44240, by regular U. S. mail service, this _____ day of May, 1984.

DENNIS M. WHALEN
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Thomas M. RETTIG, et al., Plaintiffs-Appellants, Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT, Defendant-Appellee, Cross-Appellant,

and

Kenneth Cardinal, et al., Defendants-Appellees.

Nos. 81-3586, 81-3595.

United States Court of Appeals, Sixth Circuit.

Argued June 30, 1983.

Decided Nov. 8, 1983.

Handicapped student and his mother petitioned for review of decision of the Ohio State Board of Education which affirmed hearing officer's decision in favor of school district on complaint of the student's parents questioning quality of education their son was receiving. The United States District Court for the Northern District of Ohio, Ann Aldrich, J., 539 F.Supp. 768, affirmed hearing officer's decision but directed school district to provide student with one hour of extracurricular activities each week, and the parties cross-appealed. The Court of Appeals, Krupansky, Circuit Judge, held that: (1) school district provided adequate in-service training under terms of the Education for All Handicapped Children Act; (2) specific programs requested by plaintiffs were not necessary to permit student to benefit from his instruction; and (3) the Act did not require the state of Ohio to maximize potential of the student commensurate with opportunity provided to other children.

Affirmed in part and vacated and remanded in part.

* The Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

1. Schools ⇐148

The Education for All Handicapped Act did not oblige school district to provide in-service training to parents of handicapped student, and in-service training provided by the school district to its employed staff was adequate. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

2. Schools ⇐148

District court properly refused to interfere with state of Ohio's implementation of its educational program as it related to handicapped student; specific programs requested by student's parents were not necessary to permit student to benefit from his instruction. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

3. Schools ⇐148

The Education for All Handicapped Children Act did not require that the state of Ohio maximize potential of handicapped child commensurate with opportunity provided to other children. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C.A. § 1401 et seq.

Edward G. Kramer, Floyd J. Miller, Cleveland, Ohio, for plaintiffs-appellants, cross-appellees.

Eva Rettig, pro se.

Dennis M. Whalen (argued), G. Frederick Compton, Jr., Dennis M. Whalen Co., L.P.A., Cuyahoga Falls, Ohio, Gary E. Brown (argued), Asst. Atty. Gen., Columbus, Ohio, for defendant-appellee, cross-appellant.

Edward G. Kramer, Floyd J. Miller, Kramer and Associates Co., L.P.A., Cleveland, Ohio, amicus curiae on behalf of appellants.

Before LIVELY, Chief Judge, KRUPANSKY, Circuit Judge, and FEIKENS, District Judge *.

KRUPANSKY, Circuit Judge.

This is an appeal and cross-appeal from the final order of the District Court for the Northern District of Ohio in this action involving the education of a handicapped child.

The district court entered extensive findings of fact below and reference is made to that opinion for a full exposition of the background of this controversy. *See, Rettig v. Kent City School District*, 539 F.Supp. 768 (N.D.Ohio 1981). It is sufficient to restate here that Thomas M. Rettig (Thomas) is a severely handicapped teen-age child. Thomas displays symptoms of autism and is also believed to be mentally retarded.

In February of 1978 Thomas' parents requested a due process hearing pursuant to the Education for All Handicapped Children Act of 1975 (EHCA or Act) 20 U.S.C. § 1401 *et seq.*, questioning the quality of the education their son was receiving. A hearing was conducted before a Hearing Officer in accordance with § 1415(b)(2) of the Act. The Hearing Officer decided in favor of the Kent City School District and issued a comprehensive opinion on April 30, 1979. It was affirmed by the State Board of Education.

The initial complaint in this matter was filed in the District Court for the Northern District of Ohio on November 30, 1979. The complaint joined Thomas and his mother as parties plaintiff and named the Kent City School District as defendant. Plaintiffs, in the initial complaint, essentially petitioned for review of the state decision pursuant to 20 U.S.C. § 1415(e)(2),[1] and also asserted violations of the Rehabilitation Act of 1973, 29 U.S.C. § 794. An amended complaint incorporated additional allegations of constitutional infringements under 42 U.S.C. § 1983 and joined, as defendants, the superintendent of the Kent City School District, the director of special education for the district, the State Board of Education of Ohio and the state superintendent of education.

The lower court, subsequent to duly conducted hearings in August of 1980, denied plaintiffs' request for a preliminary injunction. The trial court issued its final order in May of 1981, subsequent to a trial of the case on its merits.

The trial court upheld the administrative Hearing Officer's decision, concluding that: (a) the defendants had provided adequate inservice training for faculty and staff; (b) the defendants had devised and implemented a reasonable educational program for Thomas which would not be modified; (c) a twelve month educational program for Thomas was not required under the Act; and (d) continuous occupational therapy for Thomas was not a requirement of the Act.

The lower court did, however, direct the Kent City School District to provide Thomas with one hour of extracurricular activities each week and further decreed that the State Board of Education amend its rules to conform with federal regulations.[2] The lower court concluded, as a matter of fact, that plaintiffs had failed to prove their constitutional infringements. It also characterized the plaintiffs' claims arising under the Rehabilitation Act as merely restatements of EHCA charges and disposed of those charges by incorporating them into its resolution of the latter. Finally, the lower court declined to award attorney fees.

The plaintiffs appealed the trial court's decision insisting that Thomas was being denied a free appropriate education. The

1. 20 U.S.C. § 1415(e)(2) provides that any party aggrieved by the resolution of an administrative hearing under the Act:

> shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

2. Federal regulations mandate a final disposition of all appeals from decisions of Hearing Officers within 30 days of issuance thereof. 34 C.F.R. § 300.512 (1982). The State rules permitted a 60-day interval.

Kent City School District cross-appealed from the lower court's order mandating the district to provide Thomas with one hour of extracurricular activities each week. The State revised its regulations in accordance with the lower court's order and did not appeal. *See* O.A.C. § 3301-51-02(6)(12)(f).

Initially, we conclude that the lower court's findings with respect to the constitutional claims are not clearly erroneous and we affirm the court's ruling as to those claims. This Court also agrees that, in this case, the plaintiffs' complaints purportedly arising under the Rehabilitation Act, with one exception, are resolved by the disposition of the EHCA claims. *See* 34 C.F.R. §§ 104.33, 104.36 (1982). Accordingly, this Court is confronted with only those issues joined under the EHCA. In considering the asserted violations of the EHCA the Court is directed to the Supreme Court's recent explication of the Act.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, — U.S. —, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), the Supreme Court reviewed the policies, procedures and objectives of the Act. It also specifically identified and delimited a court's obligation in actions instituted pursuant to § 1415(e)(2). The Court stated:

> [A] court's inquiry in suits brought under § 1415(e)(2) is two-fold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Id. at —, 102 S.Ct. at 3051 (footnotes omitted).

Plaintiffs urge that both inquiries should be answered in the negative. In addressing the procedural requirements of the Act the plaintiffs assert that the State failed to develop adequate programs for inservice training of teachers and support personnel as directed by the EHCA.

The EHCA specifically requires a State participating under the Act to submit a plan incorporating, *inter alia*:

> a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel,

[1] The district court found that the defendants had developed and implemented a wide range of inservice training programs which satisfied the requirements of the EHCA. That conclusion is supported by the record.

Plaintiffs have argued, however, that parents should be included within the meaning of "support personnel" and therefore the Kent City School District was obliged to provide inservice training to the parents of Thomas. The legislative history, however, discloses that Congress intended the term "support personnel" to denote professional staff employed by the school system. The Senate Report, in discussing the Act's provision regarding inservice training, stated, in pertinent part:

> High quality educational services for all handicapped children will require a greater number of support personnel, as well as teachers. The supportive services should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

S.Rep. No. 94-168, 94th Cong., 1st Sess. 34, *reprinted in* [1975] U.S.Code Cong. & Ad. News, 1425, 1457. Accordingly, plaintiffs' contention that "support personnel" should include parents is unfounded and this Court concludes that defendants provided adequate inservice training under the terms of the EHCA.

[2] The plaintiffs have challenged the quality of the educational program developed for Thomas in several respects. In sum, however, the plaintiffs' arguments merely reflect a difference of opinion as to the most effective teaching methods available to advance Thomas' education. Various

experts testified as to an appropriate educational program for Thomas. The courts, however, are not free to choose between competing educational theories and impose that selection upon the school system. As the Supreme Court admonished in *Rowley*, *supra* at ——, 102 S.Ct. at 3051–52:

> In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and materials." § 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to § 1415(e)(2).
>
> We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." *San Antonio School District v. Rodriguez*, 411 U.S. 1, 42 [93 S.Ct. 1278, 1301, 36 L.Ed.2d 16] (1973). We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States. (footnotes omitted). This Court is of the opinion, therefore, that the lower court was correct in refusing to interfere with the State's implementation of its educational program as it related to Thomas. To the extent the plaintiffs' requested the trial court to order the school district to include specific programs within Thomas' curriculum—for example, summer classes and continuous occupational therapy—this Court affirms the district court's denial of such relief inasmuch as the programs were not necessary to permit Thomas to benefit from his instruction.[3]

[3] The trial court ruled in favor of the plaintiffs in addressing the issue of Thomas' extracurricular activities. In granting this relief, the trial court relied on the following administrative regulation promulgated under the Act:

> § 300.306 Non-academic services.
>
> (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in these services and activities.

34 C.F.R. § 300.306 (1982).[4] The regulation apparently adopts a standard designed to ensure that handicapped children are exposed to extracurricular activities on an equal basis with non-handicapped children.

In *Rowley*, however, the Supreme Court specifically rejected a construction of the

3. The lower court also ordered the School District to conduct a multi-factored evaluation of Thomas. The School District, in fact, had attempted to perform such an evaluation but his parents objected, charging that the basis of norm-referenced or standardized testing was inappropriate for autistic children. The evidence disclosed however that such testing was an important component of an overall evaluation. It was, therefore, reasonable to require the parents of Thomas, as a condition to receiving benefits under the Act, to permit the school district to perform an evaluation of Thomas. *See, Vander Malle v. Ambach*, 673 F.2d 49 (2nd Cir.1982).

4. The regulation was initially promulgated by the Secretary of Health, Education and Welfare and appeared at 45 C.F.R. § 1210.306. However, the functions of the Secretary of Health, Education and Welfare with respect to the Act were transferred to the Secretary of Education, Pub.L. No. 96-88 § 601, 93 Stat. 668. The regulation in issue, along with scores of other

EHCA which required "that States maximise the potential of handicapped children 'commensurate with the opportunity provided to other children.'" *Rowley, supra* at ——, 102 S.Ct. at 3042, *quoting*, 483 F.Supp. 528 at 534.

The regulation and the lower court's opinion antedated the Supreme Court's opinion in *Rowley*. This Court therefore deems it appropriate to remand this issue to the district court for further consideration in light of the pronouncements in *Rowley*.[5]

In accordance with this opinion, the judgment below is AFFIRMED in all respects except that portion requiring the school district to provide extracurricular activities to Thomas which is VACATED and REMANDED for further consideration.[6] Each party shall pay its own costs.

Bernard BROWN-BEY,
Petitioner-Appellant,

v.

UNITED STATES of America, et al.,
Respondents-Appellees.

No. 83-1439.

United States Court of Appeals,
Seventh Circuit.

Submitted Oct. 14, 1983.*

Decided Nov. 1, 1983.

Prison inmate filed amended petition for writ of habeas corpus, raising numerous contentions relating to, inter alia, prison disciplinary proceeding. The United States District Court for the Southern District of Illinois, James L. Foreman, Chief Judge, granted defendants' motion to dismiss or, in alternative, for summary judgment. Inmate appealed. The Court of Appeals, Cummings, Chief Judge, held that: (1) magistrate correctly dismissed Privacy Act claim against individual; (2) requiring inmate to leave prison disciplinary hearing during testimony of assault victim did not violate inmate's right to confront his accuser; (3) evidence was sufficient to sustain prison disciplinary committee's finding that inmate was guilty of assaulting fellow inmate; (4) inmate was not entitled to hearing before being transferred from one correctional facility to another; (5) magistrate did not abuse his discretion in not holding hearing on defendants' summary judgment motion; (6) district court did not abuse its discretion in not ruling on inmate's discovery motion before granting defendants' motion to dismiss or for summary judgment; and (7) though trial court abused its discretion in failing to rule on inmate's request for appointment of counsel before ruling on defendants' motion to dismiss or for summary judgment, such error was harmless, given clear lack of merit in inmate's case.

Affirmed.

1. Records ⇐31

Privacy Act authorizes private civil actions for violations of its provisions only against an agency, not against any individual. 5 U.S.C.A. § 552a(g)(1).

was thereafter transferred to Title 34 and redesignated. 45 Fed.Reg. 77368 (1980).

5. This last issue is the exception previously alluded to wherein application of the Rehabilitation Act could provide a resolution different from that achieved by application of the EHCA. See 34 C.F.R. § 104.37 (1982). The lower court is free to address this issue on remand.

6. *Amicus curiae* has briefed the issue of attorney fees. In light of the remand, the attorney fee issue is not ripe for final resolution.

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed.R.App.P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

FILED

JAN 3 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,	)	
	)	
Plaintiffs-Appellants, Cross-Appellees,	)	
	)	
v.	)	ORDER
	)	
KENT CITY SCHOOL DISTRICT,	)	
	)	
Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Upon due consideration, the Court concludes that rehearing in this matter is not warranted and, accordingly, the appellants' motion is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

*Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

FILED
FEB 7 1984
JOHN P. HEHMAN, Clerk

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Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Appellant's motion for reconsideration of the Court's order denying rehearing is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, CLERK

*Hon. John Feikens, Chief Judge, United States District Court for the Eastern District of Michigan, sitting by designation and assignment.

Thomas M. RETTIG, et al., Plaintiffs,

v.

KENT CITY SCHOOL DISTRICT, et al., Defendants.

Civ. A. No. C79-2234.

United States District Court, N. D. Ohio, E. D.

April 24, 1981.

Opinion After Trial Aug. 25, 1981.

In action for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act, the District Court, Ann Aldrich, J., held that: (1) there was no valid claim that city school district refused to provide educational opportunity for 1971–1974 as alleged; (2) it was not meant that school system would have to provide any and all services that might be beneficial or that school must experiment with every new teaching technique that might be suggested, and school cannot spend exorbitant amount on one child at expense of others; (3) under evidence, school district tried very hard to accommodate handicapped child's parents and provide good education for their son but found it difficult at times to do both, and evidence failed to establish that school system failed child; (4) under evidence, district's in-service program met requirements of Education of the Handicapped Act for in-service training of teach-

[1083]

ers, and parents of child were not "support personnel" entitled under the Act to in-service training; (5) district in failing to provide any after-school activities in which autistic child might participate failed to provide after-school activities on equal basis and was in violation of regulation; and (6) state would be ordered to immediately revise its standard, which allowed State Board of Education 60 days to render its decisions regarding impartial hearings under Education of the Handicapped Act, so as to comply with federal regulation.

Order in accordance with opinion.

1. Federal Civil Procedure ⇐361

Substitution of parties in their official capacity by adding as defendant person who had replaced named defendant in his official capacity as superintendent of school district was automatic pursuant to rule. Fed.Rules Civ.Proc. Rule 25(d), 28 U.S.C.A.

2. Federal Civil Procedure ⇐840

Motion requesting leave to add new cause of action for alleged new statutory violations would be denied out of consideration of fairness to defendants where motion was not filed until some days before date on which case was scheduled for trial.

3. Federal Civil Procedure ⇐839
Schools ⇐148

Both Education of Handicapped Act and Rehabilitation Act required exhaustion of administrative remedies prior to pursuing civil action in district courts, and allowance of amendment of complaint so as to review new educational programs developed for handicapped student in 1979–1980 and 1980–1981 without benefit of any administrative records would not be allowed. Education of the Handicapped Act, §§ 602 et seq., 614(a)(5), 615, 615(e), 20 U.S.C.A. §§ 1401 et seq., 1414(a)(5), 1415, 1415(e); Rehabilitation Act of 1973, §§ 2 et seq., 504, 29 U.S.C.A. §§ 701 et seq., 794.

Opinion After Trial

4. Schools ⇐148

Where school psychologist made initial determination that child could not substantially profit from any program of instruction available in public schools of city and, although exclusion application was not filed with state for its determination, the parents chose instead to enroll child in private schools, there was no valid claim that city school district refused to provide educational opportunity for 1971–1974 as alleged. Ohio R.C. § 3321.05 (Repealed); § 5127.01 (now § 5126.06).

5. Schools ⇐148

Education for All Handicapped Children Act mandates free and appropriate education to all handicapped children of school age. Ohio R.C. § 3321.05 (Repealed).

6. Schools ⇐148

An "appropriate education" for child as severely handicapped as child in case at bar was one which would give him reasonable chance to acquire skills he needed to function outside of institution, and it was not meant that school system would have to provide any and all services that might be beneficial, or that school must experiment with every new teaching technique that might be suggested, and, although school system has obligation to keep abreast of changing educational strategies and implement them where success may be demonstrated, school cannot spend exorbitant amount on one child at expense of others. Ohio R.C. § 3321.05 (Repealed); Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; Education of the Handicapped Act, §§ 602(18, 19), 612(5)(B), 20 U.S.C.A. §§ 1401(18, 19), 1412(5)(B).

See publication Words and Phrases for other judicial constructions and definitions.

7. Schools ⇐148

Under evidence in suit for, inter alia, alleged violations of Education of Handicapped Act and Rehabilitation Act, school district tried very hard to accommodate handicapped child's parents and provide good education for their son but found it difficult at times to do both, and evidence failed to establish that school system failed child. Education of the Handicapped Act,

§ 602 et seq., 20 U.S.C.A. § 1401 et seq.; Fed.Rules Civ.Proc. Rule 52, 28 U.S.C.A.; Rehabilitation Act of 1973, § 504, 29 U.S.C.A. § 794; 42 U.S.C.A. §§ 1981 et seq., 1983; U.S.C.A.Const.Amends. 5, 14.

8. Schools ⇐148

Major concern of Congress when it adopted in-service training as mandatory component in overall administration of appropriate programs of special education and related services was that most school systems and teachers had little or no experience with handicapped children. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

9. Schools ⇐148

Under evidence, city school district's in-service program met requirements of Education of the Handicapped Act for in-service training of teachers, and parents of child were not "support personnel" entitled under the Act to in-service training. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

See publication Words and Phrases for other judicial constructions and definitions.

10. Schools ⇐148

Where city school district did not provide any after-school activities in which autistic child might participate, but did provide such activities for nonhandicapped students, it failed to provide after-school activities on equal basis and was in violation of regulation. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

11. Schools ⇐148

Evidence in suit for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act failed to establish that it was inappropriate not to furnish educational program for autistic child which would include occupational therapy on continuous basis. Education of the Handicapped Act, § 613(a)(3), 20 U.S.C.A. § 1413(a)(3).

12. Schools ⇐148

School district's assessments of group of children for purpose of compliance with funding legislation, where such assessments did not involve placement decisions for any specific child, and where group assessments were not utilized in development of any program for him, were not evaluations for which parental consent was required.

13. Schools ⇐148

School district's application for permission to do evaluation of handicapped child failed to comply with regulations insofar as application gave general description of possible procedures and instruments and did not give general description of procedures and instruments "that will be used."

14. Schools ⇐148

Evidence in suit for, inter alia, alleged violations of Education of the Handicapped Act and Rehabilitation Act failed to establish failure on the part of state to monitor local school districts for compliance with Education of the Handicapped Act, and, rather, established that state's policy was eminently reasonable. Education of the Handicapped Act, § 612(6), 20 U.S.C.A. § 1412(6).

15. Schools ⇐148

State was ordered to immediately revise its standard, which allowed State Board of Education 60 days to render its decisions regarding impartial hearings under Education of the Handicapped Act, so as to comply with federal regulation. Education of the Handicapped Act, § 612(6), 20 U.S.C.A. § 1412(6).

Edward G. Kramer, Floyd J. Miller, Cleveland, Ohio, Sheridan Neimark, Nat. Soc. for Autistic Children, Washington, D. C., for plaintiffs.

McDowall & Whalen, Dennis M. Whalen, Cuyahoga Falls, Ohio, for Kent City School Dist.

William J. Brown, Atty. Gen., Gary E. Brown and Richard W. Ross, Asst. Attys. Gen., Columbus, Ohio, for Ohio State Bd. of Ed. and Franklin Walter.

Dennis J. Murphy, Alan F. Berliner, Carlile, Patchen, Murphy & Allison, Columbus, Ohio, for Ohio Ass'n for Protection.

[1985]

MEMORANDUM AND ORDER

ANN ALDRICH, District Judge.

Pending in this action is plaintiffs' Motion to File a Second Amended Complaint. For reasons stated below, plaintiffs' motion is granted in part and denied in part.

In their Second Amended Complaint, plaintiffs seek 1) to add as defendant Ms. Donna Lightel who has replaced the named defendant Kenneth Cardinal in his official capacity as Superintendent of the Kent City School District; and 2) to add a new cause of action alleging new violations of the Education of the Handicapped Act, 20 U.S.C. §§ 1401 *et seq.*, and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

[1] With respect to the first proposed amendment, the Court finds this substitution of parties in their official capacity to be automatic pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. Therefore, the Complaint will be amended to include Donna Lightel as a defendant, in her capacity as acting Superintendent of the Kent schools.

[2] Plaintiffs' second request is denied. On April 10, 1981, some ten days before the date on which this case was scheduled for trial, plaintiffs filed this motion requesting leave to add a new cause of action. Any consideration of fairness to the defendants would lead this Court to deny such a request.

[3] There is, however, an even more important reason why the request must be denied. Both the Education of the Handicapped Act and the Rehabilitation Act require the exhaustion of administrative remedies prior to pursuing a civil action in the district courts. Section 615 of the Education of the Handicapped Act institutes specific procedures at the State and local levels which must be pursued. Subsection (e) of § 1415 provides as follows:

> Civil action; jurisdiction
>
> (e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such a hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.
>
> (2) Any party *aggrieved by the findings and decision* made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party *aggrieved by the findings and decision* under subsection (c) of this section, shall have the right to bring a civil action *with respect to the complaint presented* pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy . . . (Emphasis added)

It is the clear intention of this provision to limit the jurisdiction of the federal district courts to a review of issues already raised in administrative hearings. This restriction on the jurisdiction of the courts reflects a congressional recognition that educational questions, such as those associated with appropriate programs for handicapped children, lie in an area in which the courts lack both specialized knowledge and special experience.

The administrative hearings in this case dealt specifically with the educational program developed for Tommy Rettig during the 1978–1979 school year. As required under Section (a)(5) of the Act, 20 U.S.C. § 1414(a)(5), this program is revised each year to meet the changing requirements of the child. Plaintiffs now ask this Court to review the new educational programs developed for Tommy Rettig in 1979–1980 and 1980–1981 without the benefit of any administrative record. This Court is not of the opinion that considerations of alleged "judicial economy" can be permitted to circumvent clear congressional intent to limit the Court's jurisdiction. This Court is sympathetic to the plaintiffs' plight; however, the limited scope of this Court's jurisdic-

tional review has been explained, on numerous occasions, to both plaintiff's counsel and to plaintiffs. The fact that legal remedies are often slow to come does not confer jurisdiction upon this Court over the issues that plaintiffs now seek to add to their Complaint. Plaintiffs' Motion to Amend the Complaint to add a new cause of action is, therefore, denied. IT IS SO ORDERED.

ORDER

It is Ordered and Adjudged that the State defendant immediately revise its standard, 3301-5-16(D)(5)(b) so as to comply with the federal regulation.

IT IS FURTHER ORDERED that the defendant School District conduct a multifactored evaluation in strict compliance with 45 C.F.R. Section 121a.532. That evaluation will be incorporated in the new IEP to be formulated for the 1981-1982 school year. The Rettigs and an expert of their choice may participate in the development of that IEP.

IT IS FURTHER ORDERED that the Kent City School District provide at least one hour per week of extracurricular activities for Thomas Rettig in accordance with the new IEP.

IT IS FURTHER ORDERED that plaintiffs' request that the defendant School District be ordered to continue to provide Thomas Rettig with a free and appropriate education for seven additional years from age 22 to 29 is hereby denied.

IT IS FURTHER ORDERED that each party shall bear their own counsel fees and costs.

IT IS FURTHER ORDERED that the court's opinion and order filed on August 25, 1981 is hereby adopted as findings of fact and conclusions of law, in accordance with Rule 52, Federal Rules of Civil Procedure.

OPINION AFTER TRIAL

This matter is before the Court following trial and presentation of evidence. In accordance with Rule 52 of the Federal Rules of Civil Procedure, the Court herewith submits its Findings of Fact and Conclusions of Law.

PROCEDURAL HISTORY

This action, in part, is a judicial review of several administrative hearings held by the State of Ohio in accordance with provisions of the Education for All Handicapped Children Act of 1975 (EHA), 20 U.S.C. §§ 1401 *et seq.*

The administrative process was initiated in February of 1978 when the parents of Thomas Rettig filed a written request for an impartial due process hearing. The administrative hearing began on January 29, 1979, and continued on an interrupted schedule until its conclusion on April 4, 1979. The State-appointed Impartial Hearing Officer issued a decision on April 30, 1979, concluding that the school system was providing a free and appropriate education for Thomas Rettig.

The plaintiffs filed an appeal from this decision to the State Board of Education on May 7, 1979. The State Board of Education, on November 13, 1979, passed a resolution affirming the conclusion of the Impartial Hearing Officer. The present action was filed on November 30, 1979, essentially as an appeal from these administrative decisions pursuant to EHA and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

On December 13, 1979, an amended complaint was filed naming four new defendants, including the State Board of Education, and alleging violations of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

THE ISSUES

The Court has limited this action to a review of the issues raised by agreement of the parties to the administrative hearing and the additional claims of unconstitutional denials of due process and equal protection, together with claims of State violations of the EHA. Specifically, those issues are:

[1987]

I. Plaintiffs' allegation that the refusal to permit Thomas Rettig to enroll in the Kent City School District in 1971 violated his rights under the due process and equal protection clauses of the United States Constitution.

II. Plaintiffs' allegation that defendants failed to provide a free and appropriate education for Thomas Rettig, in violation of the EHA:

A. The failure to provide Thomas Rettig with a twelve-month program of special education and related services;

B. The failure to provide in-service training on effective methods of teaching autistic children;

C. The failure to provide a multi-factored evaluation of Thomas Rettig;

D. The failure to provide nonacademic and extracurricular services and activities in such a manner as to afford Thomas Rettig an equal opportunity for participation in such services and activities;

E. The failure to provide occupational therapy services to Thomas Rettig.

III. Plaintiff's allegation that the State Board of Education failed to monitor and assure compliance with the law by the special education programs offered to Thomas Rettig by the Kent City School District.

IV. Plaintiffs' allegation that the State standards relating to the issuance of final orders in an administrative appeal violate the EHA on their face and in their application.

FINDINGS OF FACT

Plaintiff Thomas M. Rettig is a sixteen-year-old male child who is severely handicapped. In addition to displaying symptoms of the handicapping condition of autism, he is most likely mentally retarded. Since his school enrollment he has had periods of progress and periods of regression. Still he functions at a pre-academic level.

In 1970, when Tom was five years old, his father sought advice as to the educational prognosis of his son from defendant Michael Chrin, then a child psychologist with the Kent City School District. Mr. Chrin attempted unsuccessfully to administer several standardized psychological tests of Tom. He then recommended to Mr. Rettig that he consider some additional evaluations in the future.

In 1971, when Tom reached compulsory school age, the plaintiff Eva Rettig brought her son Tom to defendant Kent City School District's public school to enroll him. Dr. Geraldine Irvin, the school psychologist, again attempted to evaluate Tom to determine proper placement. This evaluation took approximately an hour and fifteen minutes to an hour and a half and included the administration of a standardized intelligence test, parental interview, behavior observations, matching and drawing tests, and visual discrimination instruments. At its conclusion, Dr. Irvin advised Mrs. Rettig that, in her opinion, the Kent City School District did not have any program available for Tom. Dr. Irvin informed Mrs. Rettig that it would be her recommendation that Tom be placed in Happy Day School, a state-supported school for the trainable mentally retarded. Dr. Irvin then consulted with Michael Chrin on her evaluation of Thomas Rettig. He agreed with her recommendation. This opinion was based, in part, on his own observations of Tom the previous year. Dr. Irvin then completed the required E-1 form to apply to the State Department of Education for its approval to exclude Tom from the Kent City School District in order to permit his enrollment in Happy Day.

Mr. and Mrs. Rettig, who apparently were familiar with the program at Happy Day, refused to consider the possibility of enrolling their son there and chose instead to place him in private nursery schools. When Dr. Irvin and Mr. Chrin became aware that the Rettigs had chosen a private school option, they did not file the E-1 application for exclusion.

In 1972, after a series of tests at Cuyahoga Community College, it was recommended that Tom be enrolled at Our Lady of the Elms School in Akron. Tom re-

[1688]

mained at Our Lady of the Elms until April 1974, when he entered the Severely and Multiply Impaired (SMI) unit of the Kent City School District.

These SMI classes had just been instituted the previous fall. They were housed at the University School, a private school for grades one through twelve, operated by Kent State University. The Rettigs first approached Michael Chrin in January 1974 about enrolling Tom in the SMI class, but were asked to wait until the spring when an additional aide would be available in the class.

During the summer of 1974, the Rettigs took Tom to the Judevine Center for Autistic Children in St. Louis, Missouri. The Judevine Center is a private institution whose primary purpose is to provide autistic children with the basic attention and motivation skills they need in order for them to function in public school classes. The Center also offers training sessions to both parents and teachers of autistic children.

At the Judevine Center, the Rettigs received three weeks of training in the Judevine method of intervention with autistic children. The Judevine method, as described by Rebecca Blackwell (one of plaintiffs' expert witnesses) stresses an intense one-on-one relationship between teacher and child, small classrooms, minimal distractions, and the use of negative reinforcements such as the "time-out box" and food denial.

The Rettigs were impressed with the program at the Judevine Center and the apparent progress Tom had made as a result. They conveyed their enthusiasm over the program to Dr. Robert Stanton, Superintendent of the Kent Schools. Consequently, the Kent City School District arranged for Tom's teacher Ms. Margaret Bell to attend the training program at the Judevine Center. Ms. Bell attended the three-week session in September of 1974. When she returned, she incorporated many of the Judevine techniques in her SMI class for the 1974–75 school year, which Thomas Rettig attended.

During the spring of 1975, Thomas Rettig was hospitalized in Henrotin Hospital in Chicago under the care of Dr. Theron Randolph. During this hospitalization, Dr. Randolph determined that some of Tom's behavioral problems could be attributed to allergic reactions to certain food stuffs, among them, wheat, corn, chocolate, beef, and sugar. He prescribed a strict dietary regimen which required Mrs. Rettig to maintain a rotating menu of foods for Tom so that no item was repeated within a four-day period. Mrs. Rettig spent the summer of 1975 conducting her own allergy tests with Tom to determine his reaction to other foods.

Although the Rettigs had initially been very pleased with Kent's SMI program, during the 1975–76 school year conflicts began to arise between the Rettigs and Ms. Bell over her program of instruction.

The new dietary needs of Tom caused one problem between Ms. Bell and Mrs. Rettig over a class activity that permitted the children to prepare and eat lunch once a week at Ms. Bell's home. Although Tom could participate in setting the table, preparing the food, etc., he often could not eat any of the foods offered. His own meal was prepared at home by Mrs. Rettig, and she delivered it to him at school each day at lunch time. Because denial of food had been used as a negative reinforcement for Tom, Mrs. Rettig worried that Tom would assume he was being punished when he was not permitted to eat the meal he had helped prepare.

Mrs. Rettig also objected to the number of field trips Ms. Bell had planned for the class. In Mrs. Rettig's opinion this was a waste of regular school time. She also insisted that Tom was allergic to bus fumes and therefore could not travel with the class.

These conflicts eventually culminated in a confrontation between Mrs. Rettig and Ms. Bell, and the Rettigs subsequently withdrew Tom from the class in the spring of 1976.

Thomas Rettig was re-enrolled for the 1976–77 school year, but he was transferred to the SMI class of Ms. Linda Leavitt. [1668]

Mrs. Rettig soon expressed concern over Ms. Leavitt's teaching methods. Mrs. Rettig complained that Ms. Leavitt also wasted too much time in field trips. In addition, she did not properly employ Judevine techniques; she mis-used the time-out box; on one occasion, for example, an aide apparently went away and left Tom in the box. At another point during the year, Ms. Leavitt experimented with another form of negative reinforcement. Whenever Tom refused to cooperate in his lessons, Ms. Leavitt would walk away and work with another child, explaining to Tom that when he was ready to work he should tell her so. However, Ms. Leavitt was unable to determine whether or not this would have been an effective teaching technique with Tom since it was discontinued after a week and a half at Mrs. Rettig's request.

During the summer of 1977, Thomas Rettig attended a summer school program provided by the Kent State University Department of Special Education. Much of the general program dealt with foods and nutrition so Tom's participation was limited. However, Mrs. Rettig volunteered to work with Tom's teacher for the summer, Ms. Susan Taylor.

Ms. Taylor worked well with Mrs. Rettig and Tom, so well, that Mrs. Rettig submitted a letter of recommendation on behalf of Ms. Taylor to the Kent City School District. Ms. Taylor was hired for the following fall and was Tom's teacher during 1977–78.

During the summer of 1978, Tom was enrolled in a program sponsored by the University. He also attended a camp for handicapped children.

In September 1978, the special education classes housed at the University School were moved to public school buildings. Tom's class was moved to Longcoy School, an elementary school located two blocks from the Rettig's home. Tom's class was moved to Longcoy, as opposed to some other school in the district, because of its proximity to Tom's residence. Mrs. Rettig had complained about the inconvenience of having to bring Tom's lunch to school every day. At Longcoy, Tom could walk to and from school; he could walk home for lunch.

Because the SMI classes were located in a regular public school during the 1978–79 school year, Tom was now afforded some opportunity for structured interaction with non-handicapped students. He attended music, art, and physical education classes with non-handicapped students. He also attended the first half hour of a normal fourth grade class, accompanied by an aide. He shared lunch and recess periods with non-handicapped students.

During the summer of 1979, Dr. William Bricker of Kent State's Special Education Department offered a program specifically designed for Tom, but the Rettigs refused to enroll him.[1]

CONCLUSIONS OF LAW

I. *Allegation of unconstitutional denial of educational opportunity—1971–74:*

[4] The plaintiffs claim that Thomas Rettig was denied admission to the school district of his residence, and that the alleged denial of admission violated the plaintiffs' constitutional rights to due process and equal protection.

In 1971 when Tom first attempted to enroll in public school, there was no comprehensive statutory scheme mandating the education of handicapped children. What was in existence in 1971 was a statutory scheme whereby local school districts could lawfully exclude children whose handicaps prevented them from participating in regular school programs.

In 1971, Sections 3321.05 and 5127.01 of the Ohio Revised Code were applicable. Section 3321.05 provided in part:

> A child of compulsory school age may be determined to be incapable of profiting by further instruction . . .

1. The summer programs at Kent State provided in 1977, 1978, and 1979 offered three hours of instruction per day for five weeks or more at no cost to the parents.

> . . . the capacity of a child to benefit substantially by further instruction shall be determined with reference to that available to the particular child in the public schools of the district in which he resides . . .

Section 5127.01 provided in pertinent part:

> The chief of the division of mental retardation and developmental disabilities, with the approval of the director of mental health and retardation, shall establish in any county or district a training center or workshop, residential center, and other programs and services for the special training of mentally retarded persons, including those who have been adjudged by the proper authorities to be eligible for enrollment in public schools under section 3321.01 or 3321.05 of the Revised Code and who are determined by the division of mental retardation and developmental disabilities to be capable of profitting by specialized training . . .

In *Cuyahoga County Association for Children and Adults v. Essex*, 411 F.Supp. 46 (N.D.Ohio 1976), this Court (Judge Green) held that these provisions of the Ohio Revised Code which provided for the exclusion of some mentally handicapped children did not violate any constitutional guarantees. The Court did object, however, to some aspects of the process by which the State of Ohio excluded these children:

> . . . Absent a requirement of notice of the grounds upon which dismissal is being sought, a right to review the material to be submitted in support of such application and response thereto or supplement the same and some assurance that all pertinent information will be placed before the decision makers, the required conference is a hollow formality . . . Due process requires that a child whose educational opportunity is to be affected be afforded equal opportunity with school authorities to make a presentation regarding classification or dismissal. *Ibid* at 58–59.

Plaintiffs complain that none of these procedural safeguards were afforded them.[2] However, the evidence in this case leads to the inescapable conclusion that the Kent City School District never actually excluded Tom. Dr. Irvin, the school psychologist, made an initial determination that Tom could not substantially profit from any program of instruction available in the Kent public schools. She discussed her conclusion with Mrs. Rettig. Dr. Irvin went so far as to fill out the exclusion application which, under ORC § 3321.05, must be filed with the State for its determination, but this application, known as the "E–1 form", was never filed. The Rettigs chose instead to enroll Tom in private schools. This Court cannot speculate as to what procedures might have been followed had the exclusion process actually been pursued by the School District, nor can it speculate as to what standards for exclusion might have been applied. Since the plaintiffs elected to obtain educational placement in a private school, there cannot now be a valid claim that the Kent City School District refused to provide an educational opportunity from 1971–1974 as alleged in the Amended Complaint.

II. *Allegation of failure to provide an "appropriate" education:*

Plaintiffs have charged defendants with violations of the EHA and Section 504 of the Rehabilitation Act of 1973. Although these form separate bases of jurisdiction, the discussion in this opinion will focus upon the provisions of the EHA. As the regulations promulgated under Section 504 indicate, a school system will provide the free and appropriate education and procedural safeguards required under Section 504 by complying with the EHA. 34 C.F.R. §§ 104.33(b)(2) and 104.36.

[5] The Education for All Handicapped Children Act mandates a "free and appropriate education" to all handicapped chil-

2. They also contend that Thomas Rettig did not fall within the definition of a child ". . . incapable of profitting by further instruction . . ."

dren of school age.[3] Unfortunately, Congress did not supply much in the way of substantive content to the concept of an "appropriate" education. Instead, Congress emphasized the uniqueness of each handicapped child's educational requirements and defined appropriate education as "special education and related services . . . provided in conformity with the individualized education program". 20 U.S.C. § 1401(18). The individualized education program (IEP) is developed by the parents and educators working together and states with some degree of precision the child's present level of performance, the objectives of his program and the services that will achieve them, and objective criteria for determining success. *Id.* § 1401(19). To ensure that the IEP accurately reflects the needs of the child, the Act requires a multifactored evaluation so that no single procedure, such as a standardized IQ test, is relied on exclusively in determining the child's abilities.

For purposes of determining placement, the Act sets out a second criterion in addition to appropriateness: "[T]o the maximum extent appropriate, handicapped children . . . are [to be] educated with children who are not handicapped." 20 U.S.C. § 1412(5)(B). Thus it is clear that a major emphasis of the EHA is to "mainstream" handicapped children.

In discussing the goals of the EHA, the Senate Report states: "With proper education services, many [handicapped children] would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society". S.Rep.No.94-168, 94th Cong., 1st Sess., reprinted in 1975 U.S.Code Cong. & Ad.News 1425, 1433.

[6] Therefore, this Court concludes that an "appropriate" education for a child as severely handicapped as Thomas Rettig is one that gives him a reasonable chance to acquire the skills he needs to function outside of an institution. This does not mean that the child deserves a perfect education. Indeed, it is unlikely that any child, handicapped or otherwise, ever receives a perfect education. It does not mean that a school system has to provide any and all services that might be beneficial. It does not mean that the school must experiment with every new teaching technique that may be suggested.

Despite the contention of the plaintiffs that money is no object under EHA, the courts, in general, have not adopted that approach. See *Battle v. Commonwealth of Pennsylvania*, 629 F.2d 269 (3d Cir. 1980); *Rowley v. Board of Education*, 483 F.Supp. 528 (S.D.N.Y.1980), aff'd, 632 F.2d 945 (2d Cir. 1980); *Pinkerton v. Moye*, 509 F.Supp. 107 (W.D.Vir.1981); and, by analogy, *Pennhurst v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). It hardly needs to be stated that educational funding is not unlimited, and a school cannot spend an exorbitant amount on one child at the expense of all its other handicapped children. But the school system does have an obligation to keep abreast of changing educational strategies and implement them where success may be demonstrated.

[7] None of these fine goals lend much guidance to this Court in reviewing the educational requirements of Thomas Rettig. Because of his complicated handicapping conditions of autism and retardation, and because no multi-factored evaluation of Tom exists, it is almost impossible to accurately determine what his potential is, even if that were a proper role for this Court. The plaintiffs' own experts have presented conflicting opinions as to what they believe an appropriate education for Tom entails.

Rebecca Blackwell of the Judevine Center and Dr. William Bricker of Kent State University both counsel a classroom model. The classroom model revolves around the view that the autistic child has very little motivation to learn and is easily distracted. It stresses small classrooms, one-on-one teaching, and use of negative reinforcements.

3. EHA was passed by Congress in 1975 and its statutory provisions became effective as of the 1976-77 school year. Regulations under the Act were not promulgated until 1977.

Dr. Louis Brown, Dr. Ann Donnellan and Ms. Alison Ford of the University of Wisconsin represent the view that the autistic child does not generalize, *i.e.*, that what he learns in the classroom he does not know how to apply in the practical environment. This functionalist model stresses moving out of the classroom.

The Kent City School District began with the classroom model. The District even sent Tom's teacher Ms. Bell to the Judevine Center for training. To the extent that Tom's teachers have attempted to take him out of the classroom, they have been frustrated by the Rettigs' insistence first, that field trips are a waste of time and second, that Tom cannot ride a bus, swim in a pool, or have a meal away from school because of his allergies.

In fact, it appears to the Court that many of the efforts of Tom's teachers and the School District have been frustrated by the constant intrusions of Mrs. Rettig. The Court appreciates the concern these parents have for their son. It borders on heartbreak to see parents so necessarily involved in the education of a child. But if the Kent City School District is confused as to just exactly what the Rettigs expect in the way of an education for Tom, then the Court can appreciate its position also.

For example, the Rettigs' expert witness Dr. Louis Brown testified that Tom's education ought to be provided with age-appropriate peers, *i.e.*, other sixteen-year-olds. The Rettigs now ask this Court to order the School District to move Tom's class to the high school. Yet Tom's class was originally placed at Longcoy School at the parents' request so that he could walk to school. He could not walk to the high school.

Dr. Brown recommends that Tom be taught skills in the environment in which it is most appropriate for them to be performed, like parks, restaurants and other public buildings. Yet Tom's parents have consistently in the past objected to any trips outside the school.

Dr. Brown, Dr. Ann Donnellon, and Alison Ford all stressed that Tom receive instruction in functional skills such as crossing the street, using public transportation, using elevators. Yet Tom's teacher spent a considerable amount of time teaching Tom to write his name cursively at the parents' request.

The record does not support plaintiffs' picture of an obstinate and uncaring school system, but rather one that has tried very hard to accommodate the Rettigs and provide a good education for their son, but finds it difficult at times to do both.

Many of the plaintiffs' experts base their opinion that the education provided to Tom by the Kent City School District was inappropriate on the fact that Tom has made little progress. Yet it is also clear from their testimony that children such as Tom are extremely hard to reach. No one can guarantee results with these children. Dr. Donnellon testified that autistic children, like Tom, are rote ritualistic—yet their mental retardation makes it necessary to repeat a thing in order for them to retain it. Thus, teachers are often caught in the bind of contributing to the very problem they seek to correct.

This Court is unable to declare that the school system has failed Tom. The progress reports and the testimony of Tom's parents and teachers indicate that he has gained some social skills and some self-help skills, but he fails at academic tasks. In terms of Tom's own needs, it is apparent to this Court that academics ought to be secondary because if Tom is going to escape institutionalization, he needs to master some very basic self-help skills.

A. Summer School:

Most of the experts, including defendant KSCD's expert Christopher Matey, Low-Incidence Coordinator for the Greenhills-Forest Park Board of Education, agree that some type of summer program would be beneficial to Thomas Rettig. However, the issue is not whether it might be beneficial but whether a summer school program is a necessary component of an appropriate education for Tom. In the opinion of this Court, it would be appropriate if it would prevent significant regression of skills or

knowledge retained by Tom so as to seriously affect his progress toward self-sufficiency.

The record indicates that Thomas Rettig was offered and did attend summer school during the summer of 1978. For that summer session, Tom's teacher Sue Taylor reviewed his 1977–78 IEP with his summer school teacher so that her instruction would be consistent with his regular school program. Nevertheless Ms. Taylor testified that despite the 1978 summer experience, Tom exhibited signs of regression at the beginning of the 1978–79 school year. Mrs. Rettig herself testified that Tom's periods of regression do not necessarily occur during the summer but are a year-round phenomenon. None of the experts who testified had any actual knowledge of Tom's regressive tendencies.

On the basis of this record, the Court is unwilling to order a summer school program for Thomas Rettig. However, if on the basis of a multi-factored evaluation, a new IEP for Tom called for summer school, the Court would expect the Kent City School District to offer that program and would expect the State of Ohio to provide funding.[4]

B. In-Service Training:

[8] In-service training is a mandatory component in the overall administration of appropriate programs of special education and related services. 20 U.S.C. § 1413(a)(3) provides that:

> ... (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational, instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects ...

The legislative history regarding the issue of in-service training demonstrates that Congress' major concern when it adopted this requirement was that most school systems and teachers had little or no experience with handicapped children:

> ... If the integration of handicapped children into the classroom is to be accomplished, several important changes must take place ... A teacher, who will be responsible for the management of the handicapped children in [the] classroom ...
>
> The Committee is aware that there is a shortage of fully qualified personnel trained to serve all handicapped in educational programs. Therefore, the Committee has determined that a program's continuous in-service training be undertaken to provide general and support personnel with basic requirements needed to serve handicapped children in the classroom.

1975 U.S.Code Cong. & Ad.News, 1457.

[9] However, the Kent City School District had had its SMI programs in operation for two years already. According to the testimony of Dr. Donnellon, this was years before public schools anywhere else in the country were offering programs for autistic children.

There is testimony in the administrative record, as well as supplemental evidence elicited at trial, concerning workshops, conferences, and other activities which employees of the school system attended, all with the encouragement and the funding of the school system. Internal staff meetings at which the teachers can discuss problems and exchange ideas are almost a daily occurrence among the members of the special education department of the Kent schools. When the SMI classes were moved from University School to public school buildings, meetings were conducted by Dr. Chrin with the entire staff in those buildings to explain

4. See this Court's Memorandum and Order dated September 15, 1980, on the class action issue.

the special needs of the handicapped students. Mr. Chrin works closely with his teaching staff and is always available to make suggestions or help work out a new teaching strategy. Although Mr. Chrin is not an expert in autism, as director of the program at Kent since its inception in 1974, he has had considerable experience in working with these children. He does observe his teachers often and does provide them with feedback on their performance.

Plaintiffs contend that none of these in-service activities included immediate implementation under supervised conditions, nor were any of the teachers ever tested on their new knowledge. However, it does not appear to this Court that it is necessary to treat these teachers like recalcitrant children. All of the teachers who testified appeared to be responsible dedicated professionals. They showed tremendous concern over the education of Thomas Rettig. They do need some supervision and they do need access to new information and new techniques. This Court is satisfied that the Kent City School District's in-service program meets these requirements.

Secondly, plaintiffs ask the Court to include "parents" within the meaning of "support personnel" and order the School District to provide in-service training for Mr. and Mrs. Rettig. On its face, the statute is not clear as to what persons were included in "support personnel". However, the legislative history suggests that the term refers to other professional staff employed by a school system:

> . . . The supportive service should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

1975 U.S.Code Cong. & Adm.News 1457. This Court does not find that it includes parents.

C. Extracurricular Activities and Related Services:

[10] Although the Act itself does not specifically address extracurricular activities and related services, regulations promulgated under its auspices do. 45 C.F.R. § 121a.306 provides as follows:

> (a) Each public agency shall take steps to provide non academic and extracurricular services and activities in such a manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

Extracurricular activities are offered to non-handicapped students to provide them with experiences outside the realm of their normal classroom activities. It appears to the Court that plaintiffs' latest set of experts (Dr. Brown, Dr. Donnellon, and Alison Ford), in emphasizing moving Tom out of the classroom, have essentially defined his whole education in terms of extracurricular activities. It then becomes difficult to justify additional time spent with Tom repeating the same kinds of experiences he gets during his normal school day. It would not be the same kind of enrichment that non-handicapped students derive from extracurricular activities. Of course, Tommy would benefit from the extra hour or two per week just as he might benefit from the constant instruction available at a residential school.

However, the education that Tom received between 1976 and 1979 was primarily a classroom experience. In conjunction with the classroom experience, the Kent City School District did not provide any after school activities in which a child like Thomas Rettig might participate, although the School District did provide such activities for its non-handicapped students. It therefore failed to provide after school activities on an equal basis, and has been in violation of 45 C.F.R. § 121a.306.

D. Occupational Therapy:

This issue of occupational therapy for Thomas Rettig first arose in discussions over the 1976–77 IEP. Specifically, this involves a technique known as sensory integrative therapy, developed by a Dr. A. G. Ayers in California. At that time, the Kent City School District did not employ an occupational therapist; however, Mr. Chrin did obtain consultation services. During the 1977–78 school year, Ms. Cathy Pierce, an

occupational therapist with the Mid-Eastern Ohio Special Education Regional Resource Center (MEO–SERRC), provided occupational therapy services on a weekly basis. Tom was not provided these services because the Rettigs refused to grant permission to have Tom evaluated. However, Philippa Campbell, an occupational therapist at Children's Hospital in Akron, Ohio who had evaluated Tom at the Rettigs' request, did instruct Ms. Taylor, Tom's teacher, in therapy techniques to use with Tom. According to Ms. Campbell's testimony, occupational therapy can be administered effectively by a lay person with adequate instruction.

In December of 1978, the Kent City School District hired Lorraine Lowe, an experienced qualified occupational therapist. Ms. Lowe evaluated Thomas Rettig, recommended that he receive sensory integrative therapy and testified at the administrative hearing that as soon as she completed her evaluations of the special education children, she would begin therapy sessions with Tom.

[11] Plaintiffs argue that this issue is not yet moot, however, since it goes to the issue of appropriate relief, specifically compensatory education and also to the issue of summer school. Plaintiffs contend that occupational therapy, like medical treatment, should be administered continuously until the child is cured. This does not permit a three-month hiatus in services over the summer. Plaintiffs' expert Philippa Campbell testified that "[t]he standard model for occupational therapy as well as other therapies is that therapy is provided until such point as a child no longer requires it and that it is provided continuously." P. Campbell, Tr. 154 [February 21, 1979]. Ms. Lowe testified that in her private practice in New York, she and her partner, an Ayers' faculty member, did not treat children during the summer. Neither witness testified as to how long Thomas Rettig might require therapy. Based on this evidence, the Court finds that an educational program for Thomas Rettig which does not include occupational therapy on a continuous basis is not necessarily "inappropriate".
[1096]

E. A Multi-factored Evaluation:

[12] Plaintiffs' allegation with respect to this issue has three components: first, that the Kent City School District has failed to provide a publicly-financed medical evaluation of Tom; second, that the Kent City School District has conducted evaluations without obtaining parental permission; and third, that the information made available to parents when permission is sought is inadequate.

The administrative record is clear that the Kent City School District did not provide, either before or after Thomas Rettig's initial placement, a publicly paid for, in-depth medical evaluation. Plaintiffs contend that had such a medical evaluation been completed in 1974 prior to Tom's placement in SMI class, as required, his allergic reaction to certain foodstuffs would have been discovered a year earlier. They further contend that since Tom's allergies interfere with his ability to learn, the practical effect of the defendants' failure was to deny Tom the benefit of a year of schooling. However, the applicable standard in 1974 merely stated that "[a]ll children being considered shall be examined by a licensed physician for initial placement . . ." *Comprehensive Plan for the Education of the Handicapped*, adopted July 1, 1973, p. 23. Since the Rettigs had to take their son to Chicago in order to obtain the allergy treatment outlined by Dr. Theron Randolph, it may be assumed that this treatment was not available locally. In fact, upon examination of Dr. Randolph's methods it taxes the credulity of this Court to believe that a standard medical examination by a local physician would [illegible] vered Tom's condition.

State regulations provide:

1. The parents shall be notified of intent to identify and evaluate their child suspected of needing a special education program or related service and shall be provided an opportunity to submit any data relevant to the subsequent evaluation of their child.

2. Written parental permission shall be obtained before evaluation is initiated.

3301-51-18 (B). *Standards for Special Education.*

The administrative record indicates at least two instances in which standardized testing of all the children in the SMI classes, including Tom, were undertaken by the Kent school system without notifying or requesting permission of the Rettigs, one in June of 1977, the other in May or June of 1978. It was the testimony of Mr. Chrin that these particular procedures were not administered for the purpose of determining an appropriate educational placement for any particular child but rather that these group assessments were a necessary component of the District's application for federal monies to help fund the program. The State standards define an "evaluation" for which parental consent is required as:

> . . . those activities involved in gathering data about a *specific* child, including such methods of testing and interviewing, *for the purposes of determining an appropriate educational placement for the child* . . . [Emphasis added.]

3301-51-16 (A)(4)(m), *Standards for Special Education.*

These assessments of a group of children for the purpose of compliance with funding legislation did not involve placement decisions for any specific child, including Tom. Additionally, Ms. Taylor, Tom's teacher 1977-79, testified that she did not utilize the group assessments in the development of any IEP for him. For these reasons, the Court finds no legal necessity to obtain permission of the Rettigs prior to conducting these assessments.

[13] When parental permission is sought by the Kent City School District, it must comply with the State regulations contained in 3301-15-18(B)(5). 3301-15-18(B)(5) lists ten items of information that must be provided to the parents prior to any evaluation of their child. The Rettigs have consistently refused to permit any evaluation of their son since 1976, alleging that the School District has failed to supply the requisite information.[5] In reviewing the application for permission to do an evaluation submitted to the Rettigs on September 13, 1978, the Court finds the application, for the most part, to be in compliance. It fails, however, as required by 3301-15-18(B)(5)(f) to give a "[g]eneral description of procedures and instruments that *will be used*," [Emphasis added.] Instead it provides a list of possible procedures and instruments, and to that extent, it is inadequate.

On the basis of the record in this case, there is considerable question as to whether the Rettigs would have permitted any evaluation of their son that included standardized tests. It is clear from her testimony at the administrative hearing that Mrs. Rettig firmly believes that no norm-referenced instrument is descriptive at all of her son's ability.

To some extent, it is true that autistic children are not testable. One of the primary characteristics of their handicap is that they do not seem to care to interact with other human beings. This lack of social behavior extends to parents, teachers, peers, etc., and to anyone attempting to administer a standardized test. They do not cooperate with the tester and thus, they may score much lower than their actual mental potential.

It is Mrs. Rettig's nightmare that the Kent City School District will use the results of standardized tests as the basis upon which to "force the parents to agree to place Tommy into a 169 program for retarded children", (such as Happy Day School.) See letter dated 11-22-79 from Mrs. Rettig

5. In 1976 prior to the adoption of the above-referenced regulations, Dr. Robert Robinson of MEO-SERCC did administer a psychological evaluation of Thomas Rettig for the Kent City School District. According to Dr. Robinson's report, this consisted of five different assessment instruments and observational data. During the administration of these tests, Tom's teacher was present in order to properly motivate Tom and properly interpret his responses. Inasmuch as "no single procedure was the sole criterion" for Dr. Robinson's final recommendation, this evaluation was "multi-factored".

to the Members of the State Board of Education.

However, it is clear to the Court from the expert testimony in this case that despite the problems associated with standardized tests, they can be used to gain certain information and insight into the capabilities of an autistic child and, in addition, provide an objective criterion for comparison in the future. The fact that norm-referenced procedures are used, in and of itself, does not render a multi-factored evaluation valueless.

III. *Allegation of failure to monitor compliance:*

[14] Plaintiffs produced only one witness on this issue, Dr. Samuel Bonham, Director of the Division of Special Education for the Ohio Department of Education. He testified that not only was Ohio the first state in the country to develop a comprehensive scheme for monitoring special education programs, but that Ohio's monitoring program is considered a model by other systems throughout the country. Based on that record, this Court cannot make a finding that the State has failed to monitor local school districts for compliance with EHA.

Plaintiffs contend that the very fact that the State Board of Education approved the decision of the Impartial Hearing Officer in this case demonstrates a failure to monitor. The Court finds this argument unpersuasive. Further, plaintiffs contend that the policy of the Ohio Department of Education to take no action against a school system once an impartial hearing has been requested is violative of the federal provision requiring states to monitor. See 20 U.S.C. § 1412(6).

Adoption of this view would require the State to impose sanctions before there has been a final determination as to whether a school system has, in fact, failed to comply with some aspect of the EHA. In light of the fact that the State's only sanction is to withdraw funds from the school district involved, and the obvious penalty that this would inflict on all of the district's handicapped children, the Court finds the State's policy to be eminently reasonable.

IV. *Allegation of violation of EHA by state standards regarding issuance of decisions on appeal:*

[15] The federal regulations pertaining to the procedural safeguards available under the EHA provide as follows:

> (a) The public agency shall insure that no later than 45 days after the receipt of a request for a hearing:
>
> (1) A final decision is reached in the hearing; and
>
> (2) A copy of the decision is mailed to each of the parties.
>
> (b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:
>
> (1) A final decision is reached in the review; and
>
> (2) A copy of the decision is mailed to each of the parties.

45 C.F.R. § 121a.512

Neither of these provisions has been followed in this case. Subsection (a) was apparently abrogated by the parties themselves, who agreed to an interrupted trial schedule that eventually lingered on for four months, January to April, 1979. Subsection (b) was completely ignored by the State which failed to render a decision even within the 60 days permitted under State standards.[6] The Court can certainly appreciate the State's claim that this was an extremely complicated case, but 193 days far exceed the realm of reasonable delay.

Because of these delays, by the time this case reached the level of federal court review, the record was already very cold. A new IEP for Thomas Rettig was already being formulated. That IEP is not properly before this Court, since EHA requires ex-

6. Even if the Court takes into consideration the fact that Mrs. Rettig did not submit her brief until July 20, 1979, the State did not render its decision within 30, or even 60, days from that date.

haustion of administrative remedies.[7] Hence, this Court has found itself in the very uncomfortable position of reviewing an educational program that is no longer applicable. Such a review can hardly be deemed meaningful, at least not from Tommy Rettig's point of view.

The State defendant is ordered to immediately revise its standard, 3301-5-16(D)(5)(b) [which allows the State Board of Education 60 days to render its decisions reviewing impartial hearings] so as to comply with the federal regulation.

RELIEF

1. The defendant School District has previously petitioned this Court for permission to administer a multi-factored evaluation of Thomas Rettig. In the interests of defusing the conflict between the School District and the Rettigs, and ensuring that Thomas Rettig's education continues to be appropriate for his needs, the Court orders the School District to conduct a multi-factored evaluation in strict compliance with 45 C.F.R. Section 121a.532. That evaluation will be incorporated in the new IEP to be formulated for the 1981-82 school year. The Rettigs and an expert of their choice may participate in the development of that IEP.

2. The Kent City School District is further ordered to provide at least one hour per week of extracurricular activities for Thomas Rettig in accordance with the new IEP.

3. The State defendant, as indicated in a prior section of this opinion, is ordered to revise the time allowance in 3301-5-16(D)(5)(b) and to adopt a 30-day standard.

4. As for plaintiffs request that the defendant School District be ordered to continue to provide Thomas Rettig with a free and appropriate education for seven additional years from age 22 to 29, this Court would order compensatory education in an appropriate case. See, for example, *Campbell v. Grissett*, C.A. No. 79-M-277, (N.D. Ala. March 31, 1981); however, the fact pattern here is easily distinguishable.

5. In light of the fact that each of the parties has prevailed on some of the merits, this Court is not inclined to award counsel fees. Each party is to bear its own costs.

IT IS SO ORDERED.

7. See this Court's Order dated April 24, 1981.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2853
FTS 684-2853

March 6, 1984

Mrs. Eva O. Rettig
586 Francis Street
Kent, Ohio 44240

Re: Case Nos. 81-3586/81-3595
Thomas M. Rettig, et al,
v. Kent City School Dist., et al

Dear Mrs. Rettig:

The Court is in receipt of your notice of appeal to the Supreme Court of the United States. We are returning it to you herewith.

For your information, an appeal to the Supreme Court may be taken only in a few limited cases. These cases are prescribed by statute and some are set forth in 28 U.S.C. 1252 and 1254 (2). In all other cases, review of a decision of a United States Court of Appeals is by way of the petition for writ of certiorari filed in the Supreme Court. It appears that your case is one in which a petition for writ of certiorari should be filed. Additionally, when petitioning for writ of certiorari, no notice of appeal is filed anywhere.

The address for the Supreme Court is:

1 First Street, N.E.
Washington, D. C. 20543
(202) 252-3000

I hope that this information is helpful to you.

Very truly yours,

John P. Hehman, Clerk

By Kathy M. Preuitt
(Miss) Kathy M. Preuitt
Deputy Clerk

JPH:kmp
Enclosures
cc:
Mr. Edward G. Kramer
Mr. Dennis M. Whalen
Mr. G. Frederick Compton, Jr.
Mr. Gary E. Brown

EDUCATION OF THE HANDICAPPED
20 U.S.C. §§ 1401-1461

[P.L. 91-230, April 13, 1970, 84 Stat. 121; as amended by P.L. 93-380, August 21, 1974, 88 Stat. 580, by P.L. 94-142, November 29, 1975, 89 Stat. 773, by Pub. L. 95-561, November 1, 1978, 92 Stat. 2364, and by Pub. L. 98-199, December 2, 1983, 97 Stat. 1357.]

SUBCHAPTER I—GENERAL PROVISIONS

§ 1400. Congressional statements and declarations

Short title

(a) This chapter may be cited as the "Education of the Handicapped Act."

Findings

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

Purpose

(c) It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in Section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

Pub. L. 91-230, Title VI, § 601, Apr. 13, 1970, 84 Stat. 175, amended by Pub. L. 94-142, § 3(a), Nov. 29, 1975, 89 Stat. 774 [reclassified as § 1400 in 1981].

§ 1401. Definitions

(a) As used in this chapter—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

EHLR EDITORIAL NOTE: Study of Behaviorally Disordered

Section 17 of Pub. L. 98-199, directs the Secretary to conduct a review and evaluation of the term "behaviorally disordered" and submit a report of that review and evaluation to the Congress within six months of the effective date of the law. This section of the public law will not be codified in the U.S. Code; however, it is reproduced here for reference purposes.

SEC. 17. (a)(1) The Secretary of Education shall either directly or by grant or contract, conduct a review and evaluation of the term "behaviorally disordered" as the use of such term relates to handicapped children, as defined in section 602(a)(1) of the Education of the Handicapped Act.

(2) The review and evaluation under this section shall involve the active participation of the parents of handicapped children.

(b)(1) Not later than six months after the date of the enactment of this Act, the Secretary shall submit to the Congress, for referral to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report of the review and evaluation required by this section, together with a detailed proposal for any legislation necessary to implement the recommendations of such review and evaluation.

(2) The report required under paragraph (1) shall include—

(A) the number of seriously emotionally disturbed children currently being served under the Education of the Handicapped Act, and the anticipated number of children and youth (by type of condition) in special and regular education who would be served under the Education of the Handicapped Act if the definition is changed;

(B) how the population of children currently served under such Act as "seriously emotionally disturbed" may be changed (particularly in terms of the severity of disability) if the term "behaviorally disordered" is substituted for the term "seriously emotionally disturbed";

(C) how a change in terminology will impact on the identification, assessment, types of special education and related services provided, and the availability of such services, if the change in terminology is made;

(D) how the settings in which special education and related services are provided may change if the change in terminology is made;

(E) how the change in terminology may affect the attitudes of, and the relationships among, parents, professionals, and children and youth;

(F) how the change in terminology will impact upon the training of professional personnel providing services under such Act; and

(G) a number of examples of seriously emotionally disturbed children who are currently effectively and ineffectively served.

(c) The Secretary is authorized to use funds appropriated for purposes of Part E of the Education of the Handicapped Act to carry out the purposes of this section.

(3).[*] The term "Advisory Committee" means the National Advisory Committee on the Education of Handicapped Children.

(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this chapter; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other

* Former subsection (a)(2) was deleted; however, subsections (a)(3) — (a)(22) were not renumbered.

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public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however*, That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(18) The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

(19) The term "individualized education program" means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such

child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(20) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this subchapter or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under this subchapter or under such titles.

(21) The term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act.

(22) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.

(b) For purposes of part C of this title, "handicapped youth" means any handicapped child (as defined in section 602(a)(1)) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

NOTE: (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of enactment of this Act.

(b)(1) To the extent that the amendments made by this Act to parts C, D, E, and G of the Education of the Handicapped Act prohibit or limit the use of funds, such amendments shall apply only to funds obligated after the date of enactment of this Act.

(2) As determined necessary by the Secretary of Education for purposes of providing services under the Education of the Handicapped Act pending the issuance of regulations implementing the amendments made by this Act, the Secretary shall provide financial assistance under parts C, D, E, and G of the Act as in effect on the day before the date of enactment of this Act until issuance of such regulations or March 1, 1984, whichever is earlier.

Pub. L. 91-230, Title VI, § 602, Apr. 13, 1970, 84 Stat. 175; amended by Pub. L. 94-142, § 4(a), Nov. 29, 1975, 89 Stat. 775, and by Pub. L. 98-199, § 2, Dec. 2, 1983, 97 Stat. 1357.

§ 1402. Office of Special Education Programs

(a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of the handicapped.

(b)(1) The office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3182(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of the Associate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5, United States Code."

Pub. L. 91-230, Title VI, § 603, Apr. 13, 1970, 84 Stat. 177; amended by Pub. L. 93-380, Title VI, § 612(a), Aug. 21, 1974, 88 Stat. 579, and by Pub. L. 98-199, § 3(a), Dec. 2, 1983, 97 Stat. 1357.

§ 1403. National Advisory Committee on Handicapped Children and Youth

(a) The Secretary shall establish in the Department of Education a National Advisory Committee on the Education of Handicapped Children and Youth, consisting of fifteen members, appointed by the Secretary. Not less than five such members shall be parents of handicapped children and the remainder shall be handicapped persons (including students), persons affiliated with education, training, or research programs for the handicapped, and those having demonstrated a commitment to the education of handicapped children.

(b) The Advisory Committee shall review the administration and operation of the programs authorized by this Act and other provisions of law administered by the Secretary with respect to handicapped children (including the effect of such programs in improving the educational attainment of such children) and make recommendations for the improvement of such programs. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee may make such recommendations to the Secretary as the Committee considers appropriate and shall make an annual report of its findings and recommendations to the Secretary not later than June 30 of each year. The Secretary shall transmit each such report, together with comments and recommendations, to the Congress.

(c) There are authorized to be appropriated for the purposes of this section $200,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

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Pub. L. 91-230, Title VI, § 604, Apr. 13, 1970, 84 Stat. 177, amended by Pub. L. 93-380, Title VI, § 613, Aug. 21, 1974, 88 Stat. 580; Pub. L. 94-273, §§ 3(14), 13(2), Apr. 21, 1976, 90 Stat. 376, 378, and by Pub. L. 98-199, § 4, Dec. 2, 1983, 97 Stat. 1358.

§ 1404. Acquisition of equipment and construction of necessary facilities

Authorization for use of funds

(a) In the case of any program authorized by this chapter, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

Recovery of payments under certain conditions

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this chapter the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

Pub. L. 91-230, Title VI, § 605, Apr. 13, 1970, 84 Stat. 177.

§ 1405. Employment of handicapped individuals

The Secretary shall assure that each recipient of assistance under this chapter shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this chapter.

Pub. L. 91-230, Title VI, § 606, as added Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795.

§ 1406. Grants for the removal of architectural barriers

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

Pub. L. 91-230, Title VI, § 607, as added by Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795, and amended by Pub. L. 98-199, § 5, Dec. 2, 1983, 97 Stat. 1358.

§ 1407. Requirements for prescribing regulations

(a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to handicapped children under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at IEP meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) The Secretary shall transmit a copy of any regulations promulgated under this Act to the National Advisory Committee on the Education of the Handicapped concurrently with publication in the Federal Register.

Added by Pub. L. 98-199, § 6, Dec. 2, 1983, 97 Stat. 1359.

SUBCHAPTER II — ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

§ 1411. Entitlements and allocations

Formula for determining maximum State entitlement

(a)(1) Except as provided in paragraph (3) and in section 1419 of this title, the maximum amount of the grant to which a State is entitled under this subchapter for any fiscal year shall be equal to—

(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this subchapter for the fiscal year ending September 30, 1977.

(2) For the purposes of this subsection and subsection (b) through subsection (e) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) for purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such state; and

(ii) handicapped children who are counted under section 241c-1 of this title.

(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

Distribution and use of grant funds by States for fiscal year ending September 30, 1978

(b)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 1412(3) of this title.

(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this subchapter by such State; or

(ii) $200,000;

may be used by such State for administrative costs related to carrying out sections 1412 and 1413 of this title;

(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

Distribution and use of grant funds by States for fiscal years ending September 30, 1979, and thereafter

(c)(1) Of the funds received under subsection (a) of this section by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) of this section to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 1412(3) of this title.

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this subchapter by such State; or

(II) $300,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 1412 and 1413 of this title; and

(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 1412(3) of this title.

(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

(3) The provisions of section 1413(a)(9) of this title shall not apply with respect to amounts available for use by any State under paragraph 2.

(4)(A). No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d) of this section, to less than $7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such

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funds which meets the requirements of section 1414 of this title.

(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

Allocation of funds within States to local educational agencies and intermediate educational units

(d) From the total amount of funds available local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, each local educational agency and intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B) of this section, as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this subchapter.

Territories and possessions

(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate amounts available to all States under this subchapter for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the proceeding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of such jurisdictions shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount alloted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

Indian reservations

(f)(1) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this subchapter for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Secretary an application which meets the applicable requirements of section 1414(a) of this title and which is approved by the Secretary. The provision of section 1416 of this title shall apply to any such application.

Reductions or increases

(g)(1) If the sums appropriated for any fiscal year for making payments to States under this subchapter are not sufficient to pay in full the total amounts which all States are entitled to receive under this subchapter for such fiscal year, the maximum amounts which all States are entitled to receive under this subchapter for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d) of this section, which it estimates that it will expend in accordance with the provisions of this subchapter. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this subchapter, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies and intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

Pub. L. 91-230, Title VI, § 611, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 93-380, Title VI, §§ 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, §§ 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 96-270, § 13, June 14, 1980, and by Pub. L. 98-199, § 15, Dec. 2, 1983, 97 Stat. 1357.

§ 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

Pub. L. 91-230, Title VI, § 612, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 92-318, Title IV, § 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, Title VI §§ 614(b), (f)(1), 615(a), Title VIII, § 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; and by Pub. L. 94-142, §§ 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780.

§ 1413. State plans

Requisite features

(a) Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this sub-

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chapter, with particular attention given to the provisions of sections 1411(b), 1411(c), 1411(d), 1412(2) and 1412(3) of this title;

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 241c-1 of this title, section 844a(b)(8) of this title or its successor authority, and section 1262(a)(4)(B) of this title, under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) set forth, consistent with the purposes of this chapter, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the in-service training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this subchapter) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this subchapter for services to any child who is determined to be erroneously classified as eligible to be counted under section 1411(a) or 1411(d) of this title;

(6) provide satisfactory assurance that the control of funds provided under this subchapter, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out his functions under this subchapter, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this subchapter;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this subchapter (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(10) provide consistent with procedures prescribed pursuant to section 1417(a)(2) of this title, satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 1417 of this title; and

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments

publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this subchapter, and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under section 1418 of this title.

Additional assurances

(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) of this section as are contained in section 1414(a) of this title, except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 1414(a) of this title.

Notice and hearing prior to disapproval of plan

(c) The Secretary shall approve any State plan and any modification thereof which—

(1) is submitted by a State eligible in accordance with section 1412 of this title; and

(2) meets the requirements of subsection (a) and subsection (b) of this section.

The Secretary shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

Participation of handicapped children in private schools

(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of handicapped children enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all handicapped children enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Pub. L. 91-230, Title VI, § 613, Apr. 13, 1970, 84 Stat. 179; amended by Pub. L. 93-380, Title VI, §§ 614(c), (d), 615(b), (c), Title VIII, § 843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, §§ 2(b)(3), 5(a), Nov. 29, 1975, 89 Stat. 774, 782, and by Pub. L. 98-199, § 7, Dec. 2, 1983, 97 Stat. 1359.

§ 1414. Application

Requisite features

(a) A local educational agency or an intermediate educational unit which desires to receive payments under section

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1411(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 1417(c) of this title;

(C) establish a goal of providing full educational opportunities to all handicapped children, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 1413(a)(3) of this title;

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 1412(5)(B) of this title, the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that (A) the control of funds provided under this subchapter, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this subchapter;

(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this subchapter, including information relating to the educational achievement of handicapped children participating in programs carried out under this subchapter; and

(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subclause (A);

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluation and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provision of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title; and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 1412(5)(B), 1412(5)(C), and 1415 of this title.

Approval by State educational agencies of applications submitted by local educational agencies or intermediate educational units; notice and hearing

(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application meets the requirements of subsection (a) of this section, except that no such application may be

approved until the State plan submitted by such State educational agency under subsection (a) of this section is approved by the Secretary under section 1413(c) of this title. A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) of this section if the State educational agency determines that such application does not meet the requirements of subsection (a) of this section.

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section 1420 of this title until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a) of this section.

(B) The provisions of the last sentence of section 1416(a) of this title shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 1415 of this title which is adverse to the local educational agency or intermediate educational unit involved in such decision.

Consolidated applications

(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to recieve payments because of the application of section 1411(c)(4)(A)(i) of this title or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 1411(d) of this title if an individual application of any such local educational agency has been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 1412 and section 1413(a) of this title and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this subchapter.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this subchapter, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

Special education and related services provided directly by State educational agencies; regional or State centers

(d) Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a) of this section;

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special educational and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this subchapter.

Reallocation of funds

(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 1411(d) of this title, to such other local educational agencies within the State as are not adequately providing special

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education and related services to all handicapped children residing in the areas served by such other local educational agencies.

Programs using State or local funds

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii) of this section, any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 1411(d) of this title for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

Pub. L. 91-230, Title VI, § 614, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 784.

§ 1415. Procedural safeguards

Establishment and maintenance

(a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

Required procedures; hearing

(b)(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, available, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

Review of local decision by State educational agency

(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Enumeration of rights accorded parties to hearings

(d) Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 1413(a)(12) of this title).

Civil action; jurisdiction

(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this

section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

Pub. L. 91-230, Title VI, § 615, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 788.

§ 1416. Withholding of payments; judicial review

(a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 1412 or section 1413 of this title, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this subchapter or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Secretary (A) shall, after notifying the State educational agency, withhold any further payments to the State under this subchapter, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 1413(a)(2) of this title within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Secretary withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this subchapter to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this subchapter, as specified in clause (1) or clause (2), no further payments shall be made to the State under this subchapter or under the Federal programs specified in section 1413(a)(2) of this title within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this subchapter shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 1413 of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of Title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

Pub. L. 91-230 Title VI, § 616, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 789.

§ 1417. Administration

Duties of Secretary

(a)(1) In carrying out his duties under this subchapter, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this subchapter;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

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(D) assure that each State shall, within one year after November 29, 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

(2) As soon as practicable after November 29, 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this subchapter in order to assure equity among the States.

Rules and regulations

(b) In carrying out the provisions of this subchapter, the Secretary (and the Secretary, in carrying out the provision of subsection (c) of this section)* shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

Protection of rights and privacy of parents and students

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 1232g of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this subchapter.

Hiring of qualified personnel

(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 1418 of this title and to carry out his duties under subsection (a)(1) of this section without regard to the provisions of Title 5 relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

Pub. L. 91-230, Title VI, § 617, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791.

§ 1418. Evaluation

(a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth; and

(2) to provide Congress with information relevant to policy-making and provide Federal, State, and local educational agencies with information relevant to program management, administration, and effectiveness with respect to such education.

(b) In carrying out the responsibilities under this section, the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act, and under other Federal laws relating to the education of handicapped children and youth, and such additional information, from State and local educational agencies and other appropriate sources, as is necessary for the implementation of this Act including—

(1) the number of handicapped children and youth in each State receiving a free appropriate public education (special education and related services) by disability category and by age group (3-5, 6-11, 12-17, and 18-21);

(2) the number of handicapped children and youth in each State who are participating in regular educational programs, by disability category (consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv)), and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment;

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise, by disability category and age, and anticipated services for the next year;

(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services (which may be based upon a sampling of data from State agencies including State and local educational agencies);

(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act; and

(6) a description of the special education and related services needed to fully implement the Act throughout each State, including estimates of the number of handicapped children and youth within each disability by age group (3-5, 6-11, 12-17, and 18-21) in need of improved services and the type of programs and services in need of improvement.

(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(d)(1) The Secretary is authorized to enter into cooperative agreements with State educational agencies to carry out

* So in original; probably should read: "In carrying out the provisions of this subchapter and of subsection (c) of this section, the Secretary shall issue, . . ."

studies to assess the impact and effectiveness of programs assisted under the Act.

(2) Such agreements shall--

(A) provide for the payment of not to exceed 60 per centum of the total cost of studies conducted by a participating State educational agency to assess the impact and effectiveness of programs assisted under the Act; and

(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(3) The Secretary shall provide technical assistance to participating State educational agencies in the implementation of the study design, analysis, and reporting procedures.

(4) In addition, the Secretary shall disseminate information from such studies to State educational agencies, and as appropriate, others involved in, or concerned with the education of handicapped children and youth.

(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

(2) At least one study shall focus on obtaining and compiling current information available through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services), and gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

(f)(1) Not later than one hundred and twenty days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth. The annual report is to be transmitted to the appropriate committees of each House of Congress and the National Advisory Committee on the Education of Handicapped Children and Youth, and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

(2) The Secretary shall include in each annual report—

(A) an index and summary of each evaluation activity and results of studies conducted under subsection (c);

(B) a compilation and analysis of data gathered under subsection (b);

(C) a description of findings and determinations resulting from monitoring reviews of State implementation of part B of this Act;

(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services;

(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities; and

(F) any recommendations for change in the provision of this Act or any other Federal law providing support for the education of handicapped children and youth.

(3) In the annual report for fiscal year 1985 (published in 1986) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under parts C through F of this Act; and

(B) data reported under sections 621, 622, 623, 627, 634, 641, and 653.

(g) There are authorized to be appropriated $3,100,000 for fiscal year 1984, $3,270,000 for fiscal year 1985, and $3,440,000 for fiscal year 1986 to carry out the provisions of this section.

Pub. L. 91-230, Title VI, § 618, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, § 8, Dec. 2, 1983, 97 Stat. 1360.

§ 1419. Incentive grants

Authority to make grants

(a) The Secretary shall make a grant to any State which—

(1) has met the eligibility requirements of section 1412 of this title;

(2) has a State plan approved under section 1413 of this title; and

(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 1411(a)(1)(A) of this title.

The maximum amount of the grant for each fiscal year which a State may receive under this section shall be $300 for each such child in that State.

Application

(b) Each State which—

(1) has met the eligibility requirements of section 1412 of this title,

(2) has a State plan approved under section 1413 of this title, and

(3) desires to receive a grant under this section,

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shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

Payment

(c) The Secretary shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section and for providing special education and related services for handicapped children from birth to three years of age.

Ratable reduction or increase of payments

(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this subchapter for such fiscal year, the maximum amounts which all States may receive under this subchapter for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

Authorization of appropriations

(e) In addition to the sums necessary to pay the entitlements under section 1411 of this title, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

Pub. L. 91-230, Title VI, § 619, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793, and amended by Pub. L. 98-199, § 9, Dec. 2, 1983, 97 Stat. 1363.

§ 1420. Payments

(a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this subchapter. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this subchapter after the State educational agency has approved applications of such agencies or units for payments in accordance with section 1414(b) of this title.

(b) Payments under this subchapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

Pub. L. 91-230, Title VI, § 620, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793.

SUBCHAPTER III — CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF HANDICAPPED

§ 1421. Regional resource centers

(a) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, institutions of higher education, private nonprofit organizations, State educational agencies, or combinations of such agencies and institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State agencies to local educational agencies. Each center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth;

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this section and other relevant projects conducted by the Department of Education; and

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped children.

(b) In determining whether to approve an application for a project under this section, the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

(c) Each regional resource center shall report a summary of materials produced or developed and this information shall be included in the annual report to Congress required under section 1418.

Pub. L. 91-230, Title VI, § 621, Apr. 13, 1970, 84 Stat. 181; amended by Pub. L. 98-199, §§ 621, Dec. 2, 1983, 97 Stat. 1357 and by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1363.

§ 1422. Services for deaf-blind children and youth

(a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies to—

(A) assure deaf-blind children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth upon attaining the age of twenty-two, programs and services to facilitate their transition from educational to other services.

(2) A grant, cooperative agreement, or contract pursuant to paragraph (1)(A) may be made only for programs providing (A) technical assistance to agencies, institutions, or organizations providing educational services to deaf-blind children or youth; (B) preservice or inservice training to

paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind children or youth; (C) replication of successful innovative approaches to providing educational or related services to deaf-blind children and youth; and (D) facilitation of parental involvement in the education of their deaf-blind children and youth. Such programs may include—

(i) the diagnosis and educational evaluation of children and youth at risk of being certified deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind children and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind children and youth.

(3) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations serving, or proposing to serve, deaf-blind individuals who have attained age twenty-two years; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, semi-supervised, or independent living programs.

(4) In carrying out this subsection, the Secretary shall take into consideration the need for a center for deaf-blind children and youth in light of the general availability and quality of existing services for such children and youth in the part of the country involved.

(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; and (C) the types of services provided.

(2) The Secretary shall examine the numbe of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act and subpart 2 of part B, title I, of the Elementary and Secondary Education Act of 1965 (as modified by chapter I of the Education Consolidation and Improvement Act of 1981); and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

(d) The Secretary shall disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

Pub. L. 91-230, Title VI, § 622, Apr. 13, 1970, 84 Stat. 182; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1364.

§ 1423. Early education for handicapped children

(a)(1) The Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of programs of experimental preschool and early education for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

(2) Programs authorized by this subsection shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served.

(3) As much as is feasible, such programs shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4) No arrangement pursuant to this subsection shall provide for the payment of more than 90 per centum of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services.

(5) For purposes of this subsection the term "handicapped children" includes children from birth through eight years of age.

(b)(1) Subject to paragraph (2), the Secretary is authorized to make a grant to each State through the State educational agency or other State agency to assist such State agency in planning, developing, and implementing a comprehensive delivery system for the provision of special education and related services to handicapped children from birth through five years of age.

(2) The Secretary shall make one of the following types of grants (authorized under paragraph (1)) to any State which submits an application which meets the requirements of this subsection:

(A) Planning Grant — A grant for a maximum of two years for the purpose of assessing needs within the State and establishing a procedure and design for the development of a State plan which includes parent participation and training of professionals and others.

(B) Development Grant — A grant for a maximum of three years for the purpose of developing a comprehensive State plan, and gaining approval of this plan from the State Board of Education, the Commissioner of Education, or other designated official of the appropriate State agency.

(C) Implementation Grant — A grant for a maximum of three years for the purpose of implementing and evaluating

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the comprehensive State plan. A State must apply for annual renewal of such grant.

(3) Each State educational agency or other State agency desiring to receive a grant under this subsection shall submit an application at such time, in such manner, and accompanied by such information as the Secretary considers necessary. Each such application shall contain assurances and evidence that:

(A) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency) in carrying out the grant.

(B) The State plan will address the special education and related service needs of all handicapped children from birth through five years of age with special emphasis on children who are often not identified and children who are not now served.

(C) The State plan will be closely coordinated with child-find efforts under section 612(2)(C) and with preschool incentive grant activities under section 619 of this Act.

(4) The Secretary shall include in the annual report under section 618 of this Act the following:

(A) The States and State agencies receiving grants under this subsection and the types of grants received.

(B) A description of the activities in each State being undertaken through grants under this subsection.

(C) Beginning in 1986, in consultation with the National Council for the Handicapped and the National Advisory Committee on the Education of Handicapped Children and Youth, a description of the status of special education and related services to handicapped children from birth through five years of age (including those receiving services through Head Start, Developmental Disabilities Program, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

(c)(1) Not less than 30 per centum of the funds made available in any year for the purposes of this section may be used for purposes of subsection (b).

(2) Not less than 10 per centum of the funds made available in any year for the purposes of subsection (b) shall be available for the provision of training and technical assistance to States preparing to receive or receiving grants under this section.

Pub. L. 91-230, Title VI, § 643, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1365.

§ 1424. Research, innovation, training, and dissemination activities in connection with centers and services for handicapped

(a) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with such organizations or institutions, as are determined by the Secretary to be appropriate, consistent with the purposes of this part, for—

(1) research to identify and meet the full range of special needs of handicapped children and youth;

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of handicapped children and youth;

(3) training of personnel for programs specifically designed for handicapped children; and

(4) dissemination of materials and information about practices found effective in working with such children and youth.

(b) In making grants and contracts under this section, the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(c) In carrying out the provisions of this section the Secretary is authorized to address the needs of the severely handicapped.

Pub. L. 91-230, Title VI, § 624, Apr. 13, 1970, 84 Stat. 183; amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1366.

§ 1424a. Postsecondary education programs

(a)(1) The Secretary is authorized to make grants to or enter into contracts with State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(2) In making grants or contracts on a competitive basis under this section, the Secretary shall give priority consideration to the four regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals; and

(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

(3) Of the sums made available for programs under this section, not less than $2,000,000 shall first be available for the four regional centers for the deaf.

(b) For the purposes of this section the term "handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedi-

cally impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

Pub. L. 91-230, Title VI, § 625, as added Pub. L. 93-380, Title VI, § 616, Aug. 21, 1974, 88 Stat. 584, and amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1367.

§ 1425. Secondary education and transitional services for handicapped youth

(a) The Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300)) to—

(1) strengthen and coordinate education, training, and related services for handicapped youth to assist in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services; and

(2) stimulate the improvement and development of programs for secondary special education.

(b) Projects assisted under this section may include—

(1) developing strategies and techniques for transition to independent living, vocational training, postsecondary education, and competitive employment for handicapped youth;

(2) establishing demonstration models for services and programs which emphasize vocational training, transitional services, and placement for handicapped youth;

(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs;

(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth;

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models;

(6) initiating cooperative models between educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services; and

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth.

(c) For purposes of subsections (b)(1) and (b)(2), if an applicant is not an educational agency, such applicant shall coordinate with the State educational agency.

(d) Projects funded under this section shall to the extent appropriate provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(e) The Secretary, as appropriate, shall coordinate programs described under this section with projects developed under section 311 of the Rehabilitation Act of 1973.

Amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1367.

§ 1426. Program evaluations

The Secretary shall conduct, either directly or by contract, a thorough and continuing evaluation of the effectiveness of each program assisted under this part. Results of the evaluations shall be analyzed and submitted to the appropriate committees of each House of Congress together with the annual report under section 1418.

Pub. L. 91-230, Title VI, § 626, formerly § 625, Apr. 13, 1970, Stat. 183, renumbered Pub. L. 93-380, Title VI, § 616, Aug. 21, 1974, 88 Stat. 584, amended by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.

§ 1427. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of section 621, $5,700,000 for fiscal year 1984, $6,000,000 for fiscal year 1985, and $6,300,000 for fiscal year 1986.

(b) There are authorized to be appropriated to carry out the provisions of section 622, $15,000,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

(c) There are authorized to be appropriated to carry out the provisions of section 623, $26,000,000 for fiscal year 1984, $27,100,000 for fiscal year 1985, and $28,300,000 for fiscal year 1986.

(d) There are authorized to be appropriated to carry out the provisions of subsection (c) of section 624, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,600,000 for fiscal year 1986.

(e) There are authorized to be appropriated to carry out the provisions of section 625, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,500,000 for fiscal year 1986.

(f) There are authorized to be appropriated to carry out the provisions of section 626, $6,000,000 for fiscal year 1984, $6,330,000 for fiscal year 1985, and $6,660,000 for fiscal year 1986.

Pub. L. 91-230, Title VI, § 627, formerly § 626, Apr. 13, 1970, 84 Stat. 184, renumbered and amended Pub. L. 93-380, Title VI, §§ 616, 617, Aug. 21, 1974, 88 Stat. 584, amended by Pub. L. 95-49, § 2, June 17, 1977, 91 Stat. 230, and by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.

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SUBCHAPTER IV — TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

§ 1431. Grants for personnel training

(a)(1) The Secretary is authorized to make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and the satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education including—

(A) special education teaching, including speech, language, and hearing impaired, and adaptive physical education;

(B) related services to handicapped children and youth in educational settings;

(C) special education supervision and administration;

(D) special education research; and

(E) training of special education personnel and other personnel providing special services.

(2) The Secretary shall ensure that grants awarded to applicant institutions and agencies under this subsection meet State and professionally recognized standards for the training of special education and related services personnel.

(3) Grants under this subsection may be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

(4) The Secretary in carrying out the purposes of this subsection may reserve a sum not to exceed 5 per centum of the amount available for this subsection in each fiscal year for contracts to prepare personnel in areas where shortages exist, when a response to that need has not been adequately addressed by the grant process.

(b) The Secretary is authorized to make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches for the preservice training purposes set forth in subsection (a), for regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children.

(c)(1) The Secretary is authorized to make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

(2) In order to receive a grant under this subsection a private nonprofit organization shall—

(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth; or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under this subsection;

(B) serve the parents of children with the full range of handicapping conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities authorized under this subsection.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under this subsection shall meet at least once in each calendar quarter to review such parent training and information activities, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under this subsection, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under this subsection will—

(A) be distributed geographically to the greatest extent possible throughout all the States; and

(B) be targeted to parents of handicapped children in both urban and rural areas, or on a State, or regional basis.

(5) Parent training and information programs assisted under this subsection shall assist parents to—

(A) better understand the nature and needs of the handicapping conditions of their child;

(B) provide followup support for their handicapped child's educational programs;

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) participate in educational decisionmaking processes including the development of their handicapped child's individualized educational program;

(E) obtain information about the programs, services, and resources available to their handicapped child, and the degree to which the programs, services, and resources are appropriate; and

(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

(6) Each private nonprofit organization operating a program receiving assistance under this subsection shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(7) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

Pub. L. 91-230, Title VI, § 631, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369.

§ 1432. Grants to state educational agencies for traineeships

The Secretary shall make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children, or supervisors of such teachers.

Pub. L. 91-230, Title VI, § 632, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1371.

§ 1433. Grants to improve recruitment of educational personnel and dissemination of information concerning educational opportunities for the handicapped

(a) The Secretary is authorized to make a grant to or enter into a contract with a public agency or a nonprofit private organization or institution for a national clearinghouse on the education of the handicapped and to make grants or contracts with a public agency or a nonprofit private organization or institution for other support projects which may be deemed necessary by the Secretary to achieve the following objectives:

(1) to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

(A) programs relating to the education of the handicapped under this Act and under other Federal laws; and

(B) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) to encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) to provide information on available services and programs in postsecondary education for the handicapped.

(b) In addition to the clearinghouse established under subsection (a), the Secretary shall make a grant or enter into a contract for a national clearinghouse on postsecondary education for handicapped individuals for the purpose of providing information on available services and programs in postsecondary education for the handicapped.

(c)(1) In awarding the grants and contracts under this section, the Secretary shall give particular attention to any demonstrated experience at the national level relevant to performance of the functions established in this section, and ability to conduct such projects, communicate with the intended consumers of information, and maintain the necessary communication with other agencies and organizations.

(2) The Secretary is authorized to make contracts with profit-making organizations under this section only when necessary for materials or media access.

Pub. L. 91-230, Title VI, § 633, Apr. 13, 1970, 84 Stat. 184; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1371.

§ 1434. Reports to Secretary

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training; and

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

Pub. L. 91-230, Title VI, § 634, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1372.

§ 1435. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this part (other than section 633) $58,000,000 for fiscal year 1984, $61,150,000 for fiscal year 1985, and $64,370,000 for fiscal year 1986. There are authorized to be appropriated to carry out the provisions of section 633, $1,000,000 for fiscal year 1984, $1,050,000 for fiscal year 1985, and $1,110,000 for fiscal year 1986.

(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve 10 per centum for activities under section 631(c).

Pub. L. 91-230, Title VI, § 636, Apr. 13, 1970, 84 Stat. 185; Pub. L. 93-380, Title V, § 618, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 3, June 17, 1977, 91 Stat. 230, amended by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1372.

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SUBCHAPTER V -- RESEARCH IN THE EDUCATION OF THE HANDICAPPED

§ 1441. Research and demonstration projects in education of handicapped children

(a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. Research and related activities assisted under this section shall include, but not be limited to, the following:

(1) The development of new and improved techniques and devices for teaching handicapped children and youth.

(2) The development of curricula which meet the unique educational needs of handicapped children and youth.

(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth.

(4) The development of program models and exemplary practices in areas of special education.

(5) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations.

(b) In carrying out this section the Secretary shall consider the special education experience of the applicant and the ability of the applicant to disseminate the findings of any grant or contract.

(c) The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than July 1, and shall allow a period of sixty days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than thirty days after the close of the comment period.

(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 618. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

(e) The Secretary shall coordinate the research priorities established under this section with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under this section to the National Council on the Handicapped and to the National Advisory Committee on the Education of Handicapped Children.

Pub. L. 91-230, Title VI, § 641, Apr. 13, 1970, 84 Stat. 185; Pub. L. 95-49, § 4, June 17, 1977, 91 Stat. 230, amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1372.

§ 1442. Research and demonstration projects in physical education and recreation for handicapped children

The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

Pub. L. 91-230, Title VI, § 642, Apr. 13, 1970, 84 Stat. 185; amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1373.

§ 1443. Panels of experts

The Secretary shall from time to time appoint panels of experts who are competent to evaluate various types of proposals for projects under parts C, D, E, and F, and shall secure the advice and recommendations of one such panel before making any grant or contract under parts C, D, E, and F of this Act. The panels shall be composed of—

(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals; and

(2) handicapped individuals and parents of handicapped individuals when appropriate.

Pub. L. 91-230, Title VI, § 643, Apr. 13, 1970, 84 Stat. 185, amended by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1373.

§ 1444. Authorization of appropriations

For purposes of carrying out this part, there are authorized to be appropriated $20,000,000 for fiscal year 1984, $21,100,000 for fiscal year 1985, and $22,200,000 for fiscal year 1986.

Pub. L. 91-230, Title VI, § 644, Apr. 13, 1970, 84 Stat. 186; amended by Pub. L. 93-380, Title VI, §§ 619, Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, § 5, June 17, 1977, 91 Stat. 231, and by Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1374.

SUBCHAPTER VI — INSTRUCTIONAL MEDIA FOR HANDICAPPED

§ 1451. Congressional statement of purpose

(a) The purposes of this subchapter are to promote —

(1) the general welfare of deaf persons by (A) bringing to such persons understanding and appreciation of those films which play such an important part in the general and cultural advancement of hearing persons, (B) providing through these films enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment, and (C) providing a wholesome and rewarding experience which deaf persons may share together, and

(2) the educational advancement of handicapped persons by (A) carrying on research in the use of educational media for the handicapped, (B) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of the handicapped, and (C) training persons in the use of educational media for the instruction of the handicapped.

Pub. L. 91-230, Title VI, § 651, Apr. 13, 1970, 84 Stat. 186.

§ 1452. Captioned films and educational media for handicapped persons

Establishment of loan service

(a) The Secretary shall establish a loan service of captioned films and educational media for the purpose of making such materials available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of the handicapped in accordance with regulations.

Authority of Secretary

(b) The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchased[1] equipment necessary to the administration of this subchapter;

(3) provide, by grant or contract, for the captioning of films;

(4) provide, by grant or contract, for the distribution of captioned films and educational media and equipment through State schools for the handicapped and such other agencies as the Commissioner may deem appropriate to serve as local or regional centers for such distribution.

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for the handicapped and the training of persons in the use of such films and media, including the payment to those persons of such stipends (including allowances for travel and other expenses of such persons and their dependents) as he may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies; and

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations.

Pub. L. 91-230, Title VI, § 652, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, Title VI, § 620(1), Aug. 21, 1974, 88 Stat. 585; Pub. L. 94-482, Title V, § 501(h), Oct. 12, 1976, 90 Stat. 2237.

§ 1453. Centers on educational media and materials for handicapped

(a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this subchapter as the Secretary may prescribe in such agreements. Any such agreement shall—

(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

Preferences to qualified institutions and agencies

(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

Annual Report to Congress

(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.

Pub. L. 91-230, Title VI, § 653, Apr. 13, 1970, 84 Stat. 187; Pub. L. 94-142, § 6(b), Nov. 29, 1975, 89 Stat. 795.

[1] So in original. Probably should read "purchase."

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§ 1454. Authorization of appropriations

For the purposes of carrying out this part, there are authorized to be appropriated $19,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $21,100,000 for fiscal year 1986

Pub. L. 91-230, Title VI, § 653, Apr. 13, 1970, 84 Stat. 187; amended by Pub. L. 93-380, Title VI, §§ 620(2), Aug. 21, 1974, 88 Stat. 585; Pub. L. 95-49, § 6, June 17, 1977, 91 Stat. 231; and by Pub. L. 98-199, § 13, Dec. 2, 1983, 97 Stat. 1374

ORIGINAL

Supreme Court, U.S.
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CLERK

No. 83-6494

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THOMAS M. RETTIG

-VS-

THE KENT CITY SCHOOL DISTRICT, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF APPELLANT OPPOSING MOTION TO DISMISS OR AFFIRM

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For Plaintiff-Appellant
Thomas M. Rettig

INTRODUCTORY STATEMENT

The defendants-appellees have caused the filing in this Court of a document entitled "Brief of Respondents In Opposition To Petition For Certiorari." Appellant Thomas Rettig rejects the position taken by his school district and by his State. However, he realizes that this Court may entertain the document pursuant to its Rule 10.5. which states:

> The Court may permit an appellee, without filing a cross-appeal, to defend a judgment on any ground that the law and record permit and that would not expand the relief he has been granted.

The law and record clearly do not permit this extravaganza. Also, not hearing the appeal of Thomas Rettig would expand immensely the relief which Kent and the State of Ohio have been enjoying at great costs to Thomas Rettig. His pleas have been unheeded by all; he is clearly entitled to redress which must come in the form of compensatory education for the years and years of abuse and neglect. Further, the "Brief of Respondents" might conceivably be construed as a Motion to Dismiss or Affirm under Rule 16, including 1.(d):

> The Court will receive a motion to dismiss or affirm on any other ground the appellee wishes to present as a reason why the Court should not set the case for argument.

The appellees Kent City School District and State of Ohio Board of Education and their respective officials have filed their Brief which is taken to be their Motion to Dismiss and/or Affirm in accordance with Rule 16.4.

> Rule 16.5. provides: A brief opposing a motion to dismiss or affirm may be filed by any appellant, but distribution of the jurisdictional statement and consideration thereof by this Court will not be delayed pending the filing of any such brief.

This document is Thomas M. Rettig's Brief Opposing the Motion To Dismiss or Affirm which is dubbed "Brief of Respondents In Opposition To Petition For Certiorari."

On May 5, 1984, Thomas Rettig received a copy of a document entitled "Motion of Respondents to Dismiss or Affirm." The Brief being filed by Thomas Rettig at this time is also his Brief Opposing the Motion to Dismiss or Affirm. He is filing same under Rule 16.5.

TABLE OF CONTENTS

Introductory Statement 1

Table of Authorities iii

Opinions and Judgments Below 1

Jurisdiction 6

Constitutional and Statutory Provisions Involved 7

Statement of the Case 8

Summary of Argument 8

Certificate of Service 17

Exhibits Attached to this Brief:

1. General Docket U.S.C.A. (6) received by Rettigs on Jan. 27, 1984 ..... E--1

2. General Docket U.S.C.A. (6) received by Rettigs on March 14 , 1984 ..... E--2

3. Civil Docket U.S.D.C. (N.D. Ohio, E.D.) received by Rettigs on February 9, 1984 ..... E--3 (7 pages)

4. Correspondence, Feb. 16, 1984 U.S.C.A. to Rettig returning, as unfiled, the Motion by Thomas M. Rettig for a Rehearing E-4a

   Motion by Thomas M. Rettig for a Rehearing returned, as unfiled with attached Exhibits 1 - 5 .....E-4b (10 pages)

5. Rettig Notice to Clerk, U.S.C.A. (6) Nov. 8, 1981 that both Thomas and Eva would be unrepresented by an attorney; former Rettig atty. had been fired E-5a

   Pre-Argument Statement prepared by Rettig Atty. Kramer at time of filing Notice of Appeal to U.S.C.A. showing the Ohio Revised Code Chapter and the fed. statutes being cited in the appeal E-5b

6. Correspondence, May 5, 1984 Rettig to U.S.C.A., Office of the Clerk,requesting transmission of the administrative record as certified and filed in U.S.D. C. on 3/6/80 .....E--6

TABLE OF AUTHORITIES

Cases

City of El Paso v. Simmons, 379 U.S. 497,503 (1965) 7

Cuyahoga County Association of Retarded Children and Adults v. Essex, 411 F. Supp. 46 (N.D.Ohio 1976) 4,6,7

Rettig v. Kent City School District, 539 F.Supp. 768 (1981) 1,6

Rettig v. Kent City School District, 720 F.2d 463 (1983) 1,6

Statutes

Ohio Revised Code 3321. (Compulsory School Attendance) 2,6,7

Ohio Revised Code 3323. (Special Classes) 2,6,7

Ohio Revised Code 3323.011 (Comprehensive Plan for the Education of the Handicapped) 9

Ohio Revised Code 3323.05 8,10

Ohio Revised Code 3323.08 10

P.L. 93-380 5

P.L. 94-142 5

20 U.S.C. 1401 et seq. 7

20 U.S.C. 1415 8,14

28 U.S.C. 1254(2) 6,7

42 U.S.C. 1983 9

Rules and Regulations

Ohio Standards for Special Education 2,6,7

Standard for Legal Dismissal from School Attendance 1,2,7

Standard for Slow Learning Children 2

Standards for Due Process and Procedural Safeguards 5,7,13

Standards for Multi-factored Evaluation, Least Restrictive Placement, and Individualized Educational Plan 5,7,10

Part 84.35 5,10,12

Part 84.36 5,10

Part 121a.532 5,10,12

Rules of Supreme Court

Sup. Ct. R.10.5 i

Sup. Ct. R. 15 1,15

Sup. Ct. R. 16 i

OPINIONS AND JUDGMENTS BELOW

The Appellant provided this Court with legible copies of all of the opinions rendered below. They are located in the Jurisdictional Statement pursuant to Rule 15 of this Court:

The opinion of theDistrict Court is reported at 539 F.Supp. 768 and located in Appendix (I).

The opinion of the Court of Appeals for the Sixth Circuit is reported at 720 F.2d 463 and located in the form provided to the Rettigs in Appendix (I); as are all the other relevant orders found there.

The orders and opinions of the state-appointed hearing officer and subsequent state-level review are located in Appendix II - Administrative Agency Orders.

In addition to the exhibits contained in the various appendices to the Jurisdictional Statement, Thomas Rettig is attaching to his brief being filed at this time certain exhibits from the Sixth Circuit Court of Appeals which are provided to this Court for further illumination of the facts and grounds why this High Court should hear Thomas Rettig. This is the first time that his case has been separated from that of his mother's in the federal courts.

The Post-Trial Brief written for Thomas Rettig was not filed in time to have been considered by the Sixth Circuit Court. It was filed in the District Court on February 9, 1984. It is uncertain whether Judge Aldrich considered this brief in 1981 because she states at 539F.Supp.768 at page 776:

> This Court cannot speculate as to what procedures might have been followed had the exclusion process actually been pursued by the School District, nor can it speculate as to what standards for exclusion might have been applied...

The Rettig Post-Trial Brief had attached to it as an exhibit the Standards for Special Education governing Legal Dismissal From School Attendance. Yet Judge Aldrich did not address them. Instead of consulting them, she incorrectly placed the burden on the parents instead of on the school official(s) who refused to enroll the child repeatedly until April 1974 when Thomas was nearly nine years old. She did not consider the Ohio Statute which governed private placement of a child who had not been legally

excluded from public school attendance according to a proper determination of capacity of the child to benefit from special education.

The Rettig Brief filed with the Sixth Circuit on November 16, 1981 was accompanied by an Appendix which contained two documents that are publications of the Ohio Department of Education: The Standards for Special Education effective 1966 until their revision in 1973 (including the Standard for Legal Dismissal from School Attendance and the Standard for Slow Learning Children) together with the Ohio School Attendance Handbook which contains the relevant sections of chapter 3321. of the Revised Code of Ohio. A copy of this Brief is included with the JURISDICTIONAL STATEMENT in Appendix V(C). Appendix V(A) contains the verbatim text of these provisions.

Upon visiting the Sixth Circuit Court on January 27, 1984, the Rettigs learned that their Appendix to their Brief of Nov.16, 1981 had never been filed. It had been kept in the Clerk's Office all along; no Judge had looked at it. It should still be there now because it was never returned to the Rettigs. The Rettigs further learned that the exhibits introduced into the record at the local administrative hearing had never been transmitted to Cincinnati. The Sixth Circuit Court had never received any documents which are the exhibits from the Rettig appeal to the Ohio State Board of Education.(The JURISDICTIONAL STATEMENT Appendix V(B) contains the documents relating to the state level review).
The Rettigs had requested a copy of the docket sheet prior to the oral arguments of June 30, 1983. However, they were not provided a copy until their visit to the Court on January 27, 1984. This copy of the docket sheet is attached today as Exhibit 1 . The attention of this Court is directed to page 1 lower right hand corner which lists "15 vol exhibits." On March 14, 1984 the Rettigs secured another copy of the docket sheet from the Sixth Circuit. It is Exhibit 2 and attached to this brief. The lower right hand corner now reads "Certified record &
15 vol exhibits +
1 bx of exhibits
returned to D. Ct.
2/15/84"

Yet on the visit to the Court on January 27, 1984 there was no trace of a record, let alone the actual documents, of these vital parts of the record on appeal which incriminates both the District and the State of Ohio Board of Education. These documents prove beyond any doubt that the Ohio statutes have been a part of this lawsuit all along the long road to the Supreme Court of the U.S.

A visit to the District Court in Cleveland by Eva Rettig disclosed that an attorney for the KentCity School District had removed all of these exhibits after another Kent attorney of the same firm had corresponded on the subject with a clerk of the Cincinnati Court. It must be pointed out that a thorough search for these documents was conducted at both courts; they were not found. Eva Rettig complained to both Courts. However, nothing was done by either Court because the Mandate had issued from Cincinnati and some other verbal response from Cleveland. The certified docket sheet from Cleveland is attached as Exhibit 3 of this brief. Item #19 on this sheet indicates that the administrative record was stored in a "Box of records in exhibit room) 2nd floor." However, on February 9, 1984 all that could be found in the Court was in the basement files. The document concerning the removal of these exhibits - it must be stressed that the Rettig exhibits were removed without the knowledge of the Rettigs along with those of the hearing officer which includes the Waiver the Rettigs had to sign - was in the file and is Exhibit 4 to this brief.
In the presence of Eva Rettig, the bailiff of Judge Aldrich called the attorneys of the Kent City School District concerning the return of these exhibits which had been removed without Court permission: the form provides a blank to be filled with the signature of a Judge. It never was. See Exh. 4.b.(5) attached.
The exhibits miraculously turned up on Cincinnati's docket sheet of March 14, 1984. Unfortunately, no Judge in Cincinnati had seen them prior to the opinion and mandate.
Thomas Rettig was not represented by an attorney at the time of the State level review of the administrative hearing. Thomas Rettig was not represented by an attorney in the Sixth Circuit. See Exhibit 6 to this brief. The Sixth Circuit Court allowed Eva Rettig to represent herself. The former attorneys for the Rettigs

filed a brief as amicus on the issue of attorneys fees. This is the sole contribution to Thomas Rettig's parents case. Given the circumstances of this case where the vital exhibits were withheld from the appellate court, as reported above and documented with the attached exhibits to this brief, it is extremely doubtful that Thomas Rettig received any representation at all since the Sixth Circuit Court lists Eva Rettig as representing herself only. Not Thomas Rettig at all. Her case is still in Cincinnati since the Sixth Circuit Court determined that the issue was not ripe for its determination concerning financial matters.

It is the belief of Eva Rettig - she is no attorney, however, - that the Sixth Circuit Court of Appeals should have provided a rehearing to Thomas Rettig so that it could have been fair and just to him. He continues to suffer discrimination from his District and from his State. Judge Lambros has not intervened in the action pending in his Court since July 1983. Thomas is vegetating instead of learning vital life skills necessary for living without caretakers in an institutional setting when his parents are dead.

The school has no evaluation which justifies their actions and inactions concerning this human being. They are arbitrary and cruel and contrary to the procedural safeguards guaranteed to Thomas by laws of this State and this nation.

The Three-judge panel in Cuyahoga County Association For Children and Adults v. Essex (411 F.Supp 46 (N.D. Ohio 1976) upheld the Ohio scheme of educating handicapped children but ordered revisions of procedural safeguards. In the case of Thomas Rettig, not even the minimally required procedures were implemented by Kent; yet the State of Ohio Board of Education upheld Kent openly since 1979 concerning Thomas Rettig. A copy of 411 F.Supp. 46 is contained in the JURISDICTIONAL STATEMENT Appendix V(A). These same laws were part of the appeal to the Sixth Circuit. See Exhibits 5(a) and 5(b) attached to this brief. Their validity or constitutionality per se is not the issue. The issue is that they

were not implemented for Thomas Rettig. The issue is that no Court has bothered to verify the compliance with the laws which Kent and Ohio allege vis-a-vis Thomas Rettig specifically. The hearing officer ruled on preponderance of evidence. As did the Ohio State Board of Education. As did Judge Aldrich. The Sixth Circuit Court of Appeals did not check for compliance of any of the evaluations requests or the partial evaluation which was incomplete and in violation of Ohio special education law and in violation of the definitions and other statutory requirements of P.L. 93-380 and P.L.94.-142. The partially completed evaluation of 1976 was the basis, supposedly, of the IEPPs which Kent developed for Thomas Rettig in 1976, 77, 78, 79, 80. It is included in the JURISDICTIONAL STATEMENT Appendix V(D). However, the IEP for 1976 predates the date on the evaluation report. The evaluation report was not used in the development of either this IEP nor in the development of any subsequent IEP for Thomas Rettig. The recommendations contained in the report for close structure and teaching ratio of 1:1 were countered by Kent Schools with a multitude of field trips of the class of Thomas Rettig combined with all the other classes of handicapped children which the Kent City School District segregated in a ghetto it had created on the campus of Kent State University for its enrolled handicapped children. Examples of the field trips instead of systematic instruction are contained in the exhibits of the administrative record which were withheld from the Sixth Circuit Court of Appeals.

The Standards for Due Process and those for Multi-Factored Evaluation, Least Restrictive Placement, and Individualized Education Plan have all been violated consistently vis-a-vis Thomas Rettig. Also violated were their federal counterparts Part 121a.532 etc. and Part 84. 36. etc. Their verbatim text is found in the JURISDICTIONAL STATEMENT Appendix V(A).

The opinions and judgments below do not verify compliance with the requirements of these laws vis-a-vis Thomas Rettig.

Therefore, the Supreme Court must intervene and hear the appeal of Thomas Rettig. He is entitled to redress.

JURISDICTION

As stated above, the Appellant seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. 1254(2). The state statutes are contained in the JURISDICTIONAL STATEMENT Appendix V(A). The appellate Court which upheld chapters 3321 (compulsory attendance and legal determination of capacity of child to dismiss the child from compulsory attendance) and 3323 (special classes) and the Standards for Special Education as constitutional is the Three-Judge Panel constituted to hear the 1976 case against the Superintendent for Public Instruction of the State of Ohio Board of Education. In the Rettig case, the District Court quotes the Three-Judge Panel law suit as governing part of the Rettig case. Since the Sixth Circuit Court of Appeals upheld Judge Aldrich in most respects (the only exception cited is the remanded issue on extra-curricular activities) it follows that those two chapters are still deemed constitutional by the appellate Court in Ohio. The federal question which the Supreme Court is asked to address is that of due process and equal protection under the laws. The question is detailed in the JURISDICTIONAL STATEMENT and summarized there as well.

The issue of Jurisdiction in this Court is addressed in the JURISDICTIONAL STATEMENT on pages 30 to 36. Since the Rettig case involves the State of Ohio Board of Education as a party, the Supreme Court also has jurisdiction under 28 U.S.C.1251.

On page 2 of the "Brief of Respondents in Opposition", Mr. Whalen might mislead this Court concerning the purported directions from a deputy clerk to Eva Rettig, concerning procedures to secure an appeal. That letter is addressed to Eva Rettig and not to Thomas Rettig. It must be remembered that in the Cincinnati Court both are joined. Thomas Rettig is invoking the jurisdiction of the Supreme Court pursuant to 28 U.S.C.1254(2) in his appeal. The Constitution of theUnited States guarantees him due process and equal protection under the laws of Ohio and of this country. His school district and his State have violated his rights.

Thomas Rettig submits that the provisions of 28 U.S.C. 1254(2) are applicable to the present case. He filed a timely notice, and he perfected his appeal by docketing the case with the filing of his JURISDICTIONAL STATEMENT on March 29, 1984.

Mr. Whalen cites City of El Paso v. Simmons, 379 U.S.497,503 (1965). In pertinent part, page 447 (13 L ed 2d 446, 85 S Ct 577) states:

> 2. The provision in 28 USC 1254(2) that an appeal to the Supreme Court from a Federal Court of Appeals "shall preclude review by writ of certiorary at the instance of such appellant" means only that if an appeal is proper and has been taken, certiorary will not thereafter be available; where the appeal is not proper, the Supreme Court will still consider a timely application for certiorari.

The case is now before the Court pursuant to 28 USC 1254(2). The federal district court had original jurisdiction regardless of the amount in contraversy. The Sixth Circuit upheld the opinion of the District Court. The District Court considered the statutes of Ohio which were upheld by the Three-Judge Panel. In 1983 an appellate Court still found Ohio Revised Code chapters 3321 and 3323 constitutional as did an appellate Court in 1976. The same is true of their administrative code counterparts. They are valid and constitutional pro se. They are not being implemented vis-a-vis Thomas Rettig.

The Supreme Court should exercise its jurisdiction over this appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On page 3 of their Brief in Opposition, the Defendants cite one single statute in their defense, 20 USC 1401 et seq. together with an appendix containing a part of Education for the Handicapped Law Report reporduced by reduction to very small print in violation of the specific rule of this Court.

The attention of this Court is directed to the Jurisdictional Statement Appendix V(A) for the appropriate constitutional and statutory provisions involved in this case. In order to grant compensatory education to Thomas Rettig, more than one federal statute must be used as a basis for an opinion that is just and equitable.

Furthermore, it cannot be emphasized enough that Thomas Rettig, under Ohio laws for special education, has been eligible for proper public education since 1970 - based upon proper evaluation of his needs.

STATEMENT OF THE CASE

On page 4 of their brief in Opposition, the defendants address the IMPARTIAL DUE PROCESS HEARING. The JURISDICTIONAL STATEMENT contains the Rettig version on pages 38 through 40 as to STATEMENT OF THE CASE. The due process hearing is reason, in part, for invoking the jurisdiction of this Court and is discussed in the JURISDICTIONAL STATEMENT ON page 30 ff.

To summarize here, there was no due process hearing as is provided in 20 USC 1415 and in Part E of the implementing regulations of this statute. There was no due process hearing as is provided in Ohio Revised Code 3323.05 and its implementing Standard found in the JURISDICTIONAL STATEMENT Appendix V(A). The exhibits introduced at the so-called due process hearing were never seen by the Sixth Circuit Court because they had been removed from the District Court by the attorney for the Kent City School District.

See also JURISDICTIONAL STATEMENT Appendix II (Administrative Orders).

Also on page 4, they address the APPEAL TO STATE BOARD OF EDUCATION. The JURISDICTIONAL STATEMENT contains the Rettig position. The STATEMENT OF THE CASE relative to the state level review is found on pages 38 through 40. The total violation of the guaranteed rights of Thomas Rettig is grounds, in part, for invoking this Court's jurisdiction. Along with all of the exhibits, the Kent attorney removed every shred of evidence concerning the state level review from the District Court, as discussed above. The Cincinnati Court did not have this vital information at the time it was considering the case of Thomas Rettig. See the JURISDICTIONAL STATEMENT pp. 30 - 36. See also Exhibits 1, 2, 4, 5, 6, 7, 8 which are attached to this brief today.

There was no attorney involved on the side of the Rettigs at the time of the state level review.

The JURISDICTIONAL STATEMENT Appendix V(B) contains the documents concerning the State Level Review of the state-appointed independent hearing officer who was the law partner of Kenneth Cardinal's brother or cousin. Kenneth Cardinal is the former superintendent of Kent, a named defendant now replaced by Donna Lightel. What a miscarriage of justice!

It is most significant that this hearing officer found that at the time of placement of Thomas Rettig no evaluation was made of this student by the KentCity School District and, more impartantly than that, none was required. He disposes of the Ohio Statute 3323.011 which was in effect at the time Tom was enrolled in 1974 by stating it is not a statute. How ridiculous! His opinion flies in the face of the Revised Code and the Administrative Code of Ohio. Yet, the Ohio State Board of Education upheld this miscarriage and atrocity committed upon Thomas Rettig.
The Rettigs have ordered from the Clerk of the Sixth Circuit Court of Appeals the entire record constituting the administrative phase of this law suit. See Exhibit 6 attached hereto. This Court is urged to consider it fully.

On page 5 of their Brief in Opposition, the defendants discuss the US District Court Proceeding. They fail to mention, however, that they apparently hamstrung Judge Ann Aldrich who is herself the mother of a son with autism. The transcript of the proceedings before her contains a separately bound part specifically related to this issue raised by the defendants prior to her hearing the preliminary injunction request. The visit to the Cleveland Court in February 1984 disclosed that this part had never been seen by the Cincinnati Court either. Judge Aldrich, the defendants contended, would create a haven for people who had autism and would then bring her institutionalized son here from the East so that he could enjoy the benefits created by his mother. The Judge herself explained to the Rettigs what she was facing: if she did not disqualify herself in this case under their threat, she would run the risk of being sued by these powerful defendants. She had been on the bench only a very short time and did not want to subject herself to this type of harrassment. And she did not want to openly buckle under their threat either. She certainly would not be much of a judge if she did buckle under! However, it would have been much much better for Thomas Rettig if she had not been the judge of his mother and of his school district and state.
As stated elsewhere, it is imperative that this Court provide a ruling based upon 42 USC 1983 and/or some other federal statute and/or the appropriate Ohio statute under the federal questions.

The orders and opinions of the District Court are found in the JURISDICTIONAL STATEMENT Appendix I. The various attempts made by the Rettigs to move the District Court to intervene in behalf of Thomas Rettig are contained in the JURISDICTIONAL STATEMENT Appendix V(C).

It is important to note here that the Order made upon the Kent City School District by this Court in 1981 was completely violated by the District. The so-called multi-factored evaluation was in violation of 121a.532. It was the subject of another unsuccessful due process hearing and administrative state level review. It is being litigated in the Court of Judge Lambros in Cleveland.

The record shows that the parents not only gave permission to the Kent City School District in 1976 to conduct a psychological evaluation by the State, the parents requested the evaluations of other disciplines such as occupational therapy as well. This documentation is provided in the Jurisdictional Statement Appendix V(D). The administrative record shows that no other evaluation was requested by the Kent City School District that would have met the requirements of Standard 3301-51-18 or its federal counterparts 84.35 and 84.36; 121a.532. Under Ohio Statute R.C.O. 3323.05 and 33.23.08 the Kent City School District must have the permission of the Rettigs before it administers evaluations to Thomas. However, there is no provision that the District can opt for in its mandate to educate Thomas Rettig without a legally required evaluation as the basis for the education and related services it must provide him under the law. When the teachers or the parents request an evaluation, the District must provide it according to law. Since no permission to strip the child of the procedural safeguards to which he is entitled under law was forthcoming from the parents, the District was required to go the route of a due process hearing to override the refusal of the parents of their permission. It is not sufficient that the poor district keep trying to ask the parents and vegetate and retard the child who has the right to a free appropriate public education under State and federal laws.

Thomas never received any extra-curricular activities either. For Thomas, page five of the Brief in Opposition is empty straw.

On page 6 of their Brief In Opposition, the defendants argue their position concerning the Sixth Circuit Court of Appeals. The JURISDICTIONAL STATEMENT contains the position of the Rettigs. Pages 30 - 35.

The Sixth Circuit Court erred when it decided that the Kent City School District had provided a reasonably calculated individualized educational plan for Thomas Rettig. It is inconceivable how the District could have accomplished its mandate without the required multi-factored evaluation of Thomas Rettig. This Court is asked to consider the administrative record and the JURISDICTIONAL STATEMENT Appendix V(E) which contains the Report by Dr. Lou Brown and Dr. Alison Ford of their joint evaluation of Thomas and of the individualized educational program plans of the Kent City School District. All of the qualified experts who had personal knowledge of Thomas Rettig prescribe year-round instruction for him according to very specific instructions. The Kent City School District and the State Board of Education of Ohio did not produce a single qualified expert who had personal knowledge of Thomas Rettig. According to Ohio Special Education Standards, the Kent teachers are not qualified because they are not certified for autism or emotional disturbance by the Ohio State Board of Education. Even if they were not under the control of their employer Board of Education of the District, or of the State, they would not know how to design an appropriate individualized education plan for a student with autism to the degree the disability impacts upon Thomas Rettig. The testimony and written report of the Rettig experts clearly indicate that they (the Kent staff) are not even qualified to implement an appropriately designed program. And the program is flawed from the outset since it lacks a legal multi-factored evaluation of the specific needs which must be addressed in special education and related services individualized for Thomas Rettig.

The essence of the defendants' case is a plea for permission from this High Court to continue the vegetation and systematic retardation of Thomas Rettig which the District started in 1970 and has been continuing ever since. Since 1979 with the open support and aid of the Ohio State Board of Education.

On page 7 of their brief in Opposition, the defendants provide their Summary of Argument. It is the position of Thomas Rettig that the Kent City School District did not and does not now provide him with "personalised instruction with sufficient support services to permit the child to benefit educationally from the instruction."

The critical support service is the multi-factored evaluation conducted of Thomas Rettig by his District in strict compliance with 121a.532 and/or 84.35. The verbatim text is provided in the JURISDICTIONAL STATEMENT Appendix V(A).

This has never been done of Thomas Rettig by the Kent City School District. And the Kent City School District andthe State of Ohio refuse to consider the private evaluations and recommendations. Based upon this required multi-factored evaluation, there will be a number of critical services necessary to be provided by the District and by the State if Thomas Rettig is to escape institutionalisation when his parents are dead or otherwise unable to accomodate Thomas who will be nineteen years old on May 30, 1984. He is on SSI and has an apartment in which to learn the skills he needs to survive outside an instititution and without caretakers. What he needs is a teacher to provide him the ongoing systematic instruction his parents cannot provide him.

The defendants apparently acknowledge their responsibility for formulating the education to be accorded to Thomas Rettig (see page 7 of their Brief in Opposition) and their responsibility for choosing the educational method most suitable to the needs which he displays. However, they fall far short of this goal in the implementation of this philosophical aspiration vis-a-vis Thomas. The Court of Appeals did not apply the Standards of the Supreme Court when it disposed of the case of Thomas Rettig. The record clearly demonstrates that the District never consulted and implemented a legally required evaluation which is the mandate from the Congress and from the Ohio General Assembly. Without the evaluation as the basis, the remainder of the issues are suspect as well. The District is in no position to prove to any Court via certified records, etc. that it has ever provided Thomas Rettig with special education and related services which he needs based upon a legal evaluation done by qualified professionals

The Argument of the defendants is printed on pages 8-12 of their Brief in Opposition. It must fail when the actions and inactions of the District and the State of Ohio Board of Education involving Thomas Rettig are compared with the requirements of the laws of Ohio concerning special education, both Revised Code and Admin. C. They are reproduced in the JURISDICTIONAL STATEMENT Appendix V(A). Their argument must fail under the Federal Statutes, including those cited by the defendants, if justice is to be served upon Thomas Rettig. We are not asking for a white wash, as is the intent of the defendants. The objective is the justification to spend public funds, including locally raised revenue, state funds, and supplemental federal funds, to provide the free appropriate public education to which every citizen is entitled to Thomas Rettig based upon his needs. Neither the District nor the State are willing to provide him what he needs without a proper Court Order. Instead, they are causing the expenditure of enormous sums of money for legal costs while forcing him to become more and more functionally - and perhaps mentally- retarded as they waste his formative years. The child was referred to the Director of Child Study and Special Education fifteen years ago.

This Court is respectfully requested to review the entire record as it acts upon the JURISDICTIONAL STATEMENT. Rule 15 of this Court did not request any argument per se of Thomas Rettig. For this reason, in part, this Brief is being filed at this time.

The so-called individualized educational program plans never met the requirements of any Ohio Standards for Special Education governing any given aspect such as due process in determining eligibility for services individualized to the specific needs of Thomas Rettig concerning occupational therapy services, etc. The IEPPs are essentially unchanged for all the years being litigated here. Thomas has not benefitted educationally from his instruction. He performs more poorly now on standardized tests than when younger. More importantly, Thomas does not receive instruction in self-help skills like bathing, washing his clothes, preparing simple meals required by his diet as prescribed by his personal physician, clinical Allergist, Theron Randolph, M.D. (App. V(D)).

The record supports the Rettig contention that the State never complied with the procedures set forth in the Act (EHA). And, furhter, the IEP developed for Thomas Rettig by Kent is most certainly not reasonably calculated to enable Thomas Rettig to receive educational benefits. Since these requirements clearly remain unmet, the State has failed to comply with the obligations imposed by Congress. So far, the Courts have done nothing of substance for Thomas Rettig. But the Courts can and must do more. It is up to the Supreme Court to do it for Thomas Rettig.

On page 10, the defendants apparently attempt to misguide this Court with the quotations from the District Court and from the Appellate Court in this case. The District Court clearly states that no multi-factored evaluation of Thomas Rettig exists (see 539 F.Supp.768 (1981) page 777. The Court was unwilling to intervene for whatever reasons, including those relative to the threat made upon the Judge by the powerful defendants, must be the conclusion to be drawn. Judge Aldrich states on p. 779:

> On the basis of this record, the Court is unwilling to order a summer school program for Thomas Rettig. However, if on the basis of a multi-factored evaluation, a new IEP for Tom called for summer school, the Court would expect the Kent City School District to offer that program and would expect the State of Ohio to provide funding.

The issue concerning the vital occupational therapy necessary for Thomas is found at pages 780 and 781. The Court clearly expects O.T. for Thomas during the school year. The Court was not sure as to whether Thomas required it during the summer as well. The record shows, however, that Thomas Rettig received only evaluation in O.T. from the District; he never received actual, on-going therapy as prescribed by the occupational therapist from Akron Children's Hospital who met with Mr. Chrin and Tom's teacher in 1977 and who testified at the local hearing that occupational therapy was necessary on an ongoing year-round basis until no more therapy was necessary. Tom never received any O.T. even during the school year, let alone during any summer. He still needs to learn to manipulate fasteners on clothes as one example of O.T. necessary for him according to the professional prescriptions. The defendants are quoting Judge Aldrich out of context and this may be very misleading, and it may be to the detriment of Thomas.

The Appellate Court, of course, did not have the benefit of the Akron Children's Hospital evaluation and recommendations from the Occupational Therapist mentioned above. Those were taken from the District Court in October 1981.

The Appellate Court further misconstrued, it seems, the opinion of Judge Aldrich quoted on the previous page of this Brief. The Appellate Court had seen no evaluation of any kind of Thomas Rettig when it made the statement that the programs for summer and year-round occupational therapy were not necessary to permit Thomas to benefit from his instruction. They are not necessary in the eyes of the appellate Court only because the Court was not given the basis of the evaluations. The evaluations, however, clearly point to the need for year-round instruction in systematic special education and occupational therapy which are essential if Thomas is to escape institutionalization. None of the cases cited by the defendants are even similar to the case of Thomas Rettig.

It is clear that the decision of the Court of Appeals is fundamentally wrong, and that the result which it produced is detrimental to Thomas Rettig and violates the directives of this Court in Rowley. Accordingly, it must be corrected by this Court.

Thomas Rettig vehemently objects to the position of the cruel defendants that his life outside a warehouse for the feebleminded is not sufficiently important to warrant this Court's intervention. Thomas Rettig has come a long long way in his appeal to this Court. He was endowed by his Creator with ability sufficient to deal with life and work outside an institution and without primary caretakers, according to qualified professionals who are not under the control of the District or the State of Ohio. His impaired ability, however, dictates special education and related services which are specifically designed to meet his unique needs as documented in the record on appeal.

As to the purported difference in the recommendations of the Rettig experts, this Court should realize that the first set of experts testified to the events up until January 1979 and consider the years prior to that date. By the time the case reached the level of the District Court, Thomas had reached the age of sixteen and was still being provided pre-school pre-academic education

an no self-help skills instruction and programming necessary for him if he is to survive without a primary caretaker and an institutional setting. There has been no qualified expert who did not advocate appropriate year-round programming specifically for Thomas Rettig. The Rettig experts who testified at both levels of this litigation all personally knew the student. For example, Professor William Bricker of Kent State University first met the Rettig family in 1976 and regularly visited their home, and Tom, for the next five or six years or so. His health later declined; unfortunately, he has since died. His testimony is contained in the administrative record which is to be transmitted to this Court by the Cincinnati Court Clerk.

The defendants have placed their conclusion on page 12. This version must not be accepted by this Court because it goes against the manifest weight of the record and flies in the face of both State Statute for special education and Federal Statutes relevant to this case. It clearly violates the respective implementing Standards for Special Education of Ohio and their federal counterparts.

Thomas Rettig is before this Honorable High Court on appeal from the Sixth Circuit Court of Appeals and respectfully requests the appropriate relief of compensatory education be provided him by his District and by his State.

The mail man just now delivered a type-written copy of Motion Of Respondents To Dismiss Or Affirm wherein the defendants have substituted the term "Motion to Dismiss or Affirm" for the earlier term "Brief of Respondents in Opposition to Petition."

The foregoing Rettig Brief in Opposition to Motion to Dismiss or Affirm is deemed by Thomas Rettig to be his response to this latest pleading as well as to the previous one.

Respectfully submitted,

Eva O. Rettig

EVA O. RETTIG
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Kent, OH 44240
(216) 678-0988

FOR THOMAS M. RETTIG

AFFIDAVIT OF SERVICE

A copy of the above Brief Opposing the Motion To Dismiss Or Affirm was served upon Dennis Whalen, 135 Portage Trail, P.O.Box 8, Cuyahoga Falls, Ohio 44222; and upon Gary Brown, Asst. Atty. General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 by placing same in the regular U.S.Mail, postage prepaid, this sixth day of May 1984.

Eva O. Rettig
EVA O. RETTIG

Acknowledged before me on the 4th of May, 84
Rebecca S. Jolliff

REBECCA S. JOLLIFF
Notary Public, State of Ohio
My Commission Expires April 3 19[illegible]

Form A. O. 147 (July 1958)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SIXTH CIRCUIT

APPEAL FROM: Northern District of Ohio, E.D. at Cleveland

CASE NO. 81-3581
81-3591

TITLE OF CASE	ATTORNEYS FOR APPELLANT Cross-Appellee
Thomas M. Rettig; Eva O. Rettig, Plaintiffs-Appellants, Cross-Appellees, vs. Kent City School District, Defendant-Appellee, Cross-Appellant, and Kenneth Cardinal, in his official capacity; Michael Chrin, in his official capacity; State Board of Education of Ohio; Franklin B. Walter, in his official capacity, Defendants-Appellees. (C.R.) Denial of education to handicapped	Edward G. Kramer Floyd J. Miller 240 Leader Building Cleveland, Ohio 44114 (216) 621-3377 Eva Rettig (Pro Se) 586 Francis Street Kent, Ohio 44240 (216) 678-0988 **ATTORNEYS FOR APPELLEE Cross-Appellant** Dennis M. Whalen G. Frederick Compton, Jr. Dennis M. Whalen Co., L.P.A. 135 Portage Trail, P.O. Box 8 Cuyahoga Falls, Ohio 44222 (216) 929-4291 Gary E. Brown Asst. Attorney General Ste.1613 State Office Tower 30 East Broad Street Columbus, Ohio 43215 (614) 466-8600

NO. BELOW: C79-2234

JUDGE BELOW: Aldrich

DATE OF JUDGMENT: August 25, 1981

NOTICE OF APPEAL FILED: September 22, 1981
October 6, 1981
G. Dixon

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10/7/81	Fee Paid			
10/9/81	Fee Paid			
10/20/81				15 vol exhibits

E-1

Form A. O. 147 (July 1953)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SIXTH CIRCUIT

APPEAL FROM

Northern District of Ohio, E.D. at Cleveland

CASE NO. 81-358
81-359

TITLE OF CASE	ATTORNEYS FOR APPELLANT Cross-Appellee
Thomas M. Rettig; Eva O. Rettig, Plaintiffs-Appellants, Cross-Appellees, vs. Kent City School District, Defendant-Appellee, Cross-Appellant, and Kenneth Cardinal, in his official capacity; Michael Chrin, in his official capacity; State Board of Education of Ohio; Franklin B. Walter, in his official capacity, Defendants-Appellees. (C.R.) Denial of education to handicapped	Edward G. Kramer Floyd J. Miller 240 Leader Building Cleveland, Ohio 44114 (216) 621-3377 Eva Rettig (Pro Se) 586 Francis Street Kent, Ohio 44240 (216) 678-0988 **ATTORNEYS FOR APPELLEE Cross-Appellant** Dennis M. Whalen G. Frederick Compton, Jr. Dennis M. Whalen Co., L.P.A. 135 Portage Trail, P.O. Box 8 Cuyahoga Falls, Ohio 44222 (216) 929-4291 Gary E. Brown Asst. Attorney General Ste.1613 State Office Tower 30 East Broad Street Columbus, Ohio 43215 (614) 466-8600

No. BELOW: C79-2234

JUDGE BELOW: Aldrich

DATE OF JUDGMENT: August 25, 1981

NOTICE OF APPEAL FILED: September 22, 1981
October 6, 1981
G. Dixon

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10/7/81	Fee Paid			✓
10/9/81	Fee Paid			Certified record
10/20/81				15 vol exhibits +
				1 bx of exhibits
				returned to D. Ct
				2/15/84

E 2

DIST/OFFICE	DOCKET YR	DOCKET NUMBER	FILING DATE MO	DAY	YEAR	J	NOS	O	R	CL 23	DEMAND $	OTHER	JUDGE NUMBER	MAG. DEM	CASE NUMBER
0647 01	79	2234	11	30	79	3	440	1				Injunctive relief	4717		79 2234

3

PLAINTIFFS

RETTIG, Thomas M.
RETTIG, Eva O.

DEFENDANTS

1. KENT CITY SCHOOL DISTRICT
(2. CARDINAL, Kenneth, in his
(Official capacity
Per (3. CHRIN, Michael, in his
Amended (Official capacity
complaint (4. STATE BOARD OF EDUCATION OF
12-13-79 (OHIO
(5. WALTER, Franklin B., in his
Official capacity

By: Linda J. Payne
Deputy Clerk

CAUSE

20 U.S.C.,S 1401 et seq - denial of equality under Education of all handicapped children Act of 1975
29 U.S.C.S 794 - Denial of equal opportunity under Rehabilitation Act of 1973

ATTORNEYS

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(Atty., for Ohio Assn for Protection)

E-3

Action arose at:
PORTAGE COUNTY

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
				JS-5	11/30/79
				JS-6	AUG 31 1981

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

JUDGE MANOS/ PETTIT, Thomas M., et al v.

PROCEEDINGS KENT CITY SCHOOL DISTRICT

11/30/79	1	COMPLAINT filed.
11/30/79	2	INITIAL ORDER filed. Manos, J.
11/30/79		SUMMONS issued. - copies of complaint, Initial Order and Summons to U.S.Marshal.
12/6/79	3	PRE-TRIAL ORDER filed. Manos, J.
12/13/79	4	AMENDED COMPLAINT filed. - Summons issued re: New Party Defts.
12/27/79	5	ANSWER of Deft., Kent City School District, filed. Copy mailed 12/26/79.
1/7/80	6	ANSWER of Deft., KENNETH CARDINAL to amended complaint filed. c/m 1/5/80
1/7/80	7	ANSWER of Deft., MICHAEL CHRIN to amended complaint filed. c/m 1/5/80
1/11/80	8	ANSWER of Deft., Franklin B. Walter and Deft., State Board of Education of Ohio to the amended complaint filed. c/m 1/8/80
1/16/80	9	LETTER re: Initial Order from counsel of Pltf. filed.
1/22/80	10	SUMMONS'(4) returned and filed. Served to: Franklin B. Walter on 12-19-79 by Certifed Mail; Kenneth Cardinal on 12-20-79 by Certified Mail; State Board of Education of OH. on 12-19-79 by Certified Mail; and Michael Chrin on 12-20-79 by Certified Mail. TOTAL FEES: $12.00
1/22/80	11	SUMMONS returned and filed. Served to Kent City School District on 12-6-79 by Certified Mail. FEES: $3.00
2/19/80	12	MOTION of Pltfs., for class certification, with memorandum in support filed. c/m 2/19/80
2/29/80	13	MOTION of The National Society for Autistic Children to file an Amicus Curiae Brief in support of class Certification,with brief in support filed. c/m 2/26/80
2/29/80	14	MOTION of The Ohio Assn. for Protection & Advocacy for leave to participate as Amicus Curiae,with memorandum in support filed. c/m 2/28/80 (Memorandum in support under separate cover received 2/29/80)
3/3/80	15	MEMORANDUM of Defts.,Kent City School Dist.,Cardinal & Chrin in response to pltf's motion for certification filed. c/m' 2/29/80
3/3/80	16	MOTION of Deft., Kent City School Dist. to dismiss/in limine with memorandum in support filed. c/m 2/29/80
3/3/80	17	MOTION of Defts., Kenneth Cardinal & Michael Chrin for summary Judgment, with memorandum in support filed. c/m 2/29/80
3/5/80	18	MEMORANDUM of Defts., State Board of Education of Ohio and Franklin B.Walter, State Supt. of Public Instruction, contra motion for class certification and partial motion to dismiss filed. c/m 3/3/80
3/6/80	19	CONVEYANCE OF Administrative Record by State of Ohio Board of Education & Franklin B.Walter,State Supt. of Public Instruction filed. - copies mailed 3/5/80 (Box of records in exhibit room) 2nd.floor.
3/10/80	20	MOTION of Deft., Kent City School Dist., for leave to file amended answer, with memorandum in support filed. c/m 3/7/80
3/10/80	21	MOTION of Deft., Michael Chrin for leave to file amended answer with memorandum in support filed. c/m 3/7/80
3/10/80	22	MOTION of Deft., Kenneth Cardinal for leave to file amended answer with memorandum in support filed. c/m 3/7/80
3/10/80	23	TRANSCRIPT of Administrative hearing to be filed with record of conveyance of Administrative record on 3/6/80 filed.

- continued on next sheet -

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
RETTIG, Thomas M., et al	KENT CITY SCHOOL DISTRICT	C79-2234

DATE		PROCEEDINGS	Date Order or Judgement Note
3/12/80	24	ORDER granting the National Society of Autistic Children's motion for leave to file a brief in support of Class certification as Amicus Curiae filed. Manos,J.	
3/12/80	25	BRIEF of National Society of Autistic Children in support of class certification of Amicus Curiae,National Society for Autistic Children filed. c/m 2/26/80	
3/12/80	26	ORDER granting Ohio Assn.for Protection and Advocacy leave to file Memorandum as amicus curiae filed. Manos,J. - copies mailed	
3/12/80	27	MEMORANDUM of Ohio Assn. for Protection and Advocacy in support of motion for leave to participate as Amicus Curiae filed. c/m 2/28/80 leave	
3/17/80	28	ORDER granting deft. Kenneth Cardinal to file his Amended Answer filed. Manos,J.(3/17/80).	
3/17/80	29	ORDER granting deft. Kent City School District leave to file amended answer filed. Manos,J.(3/17/80).	
3/17/80	30	ORDER granting deft. Michael Chrin leave to file its amended answer filed. Manos,J.(3/17/80).	
3/17/80	31	AMENDED ANSWER of Michael Chrin filed. Copy mailed 3/7/80.	
3/17/80	32	AMENDED ANSWER of deft. Kenneth Cardinal filed. Copy mailed 3/7/80.	
3/17/80	33	AMENDED ANSWER of deft. Kent City School District filed. Copy mailed 3/7/80.	
3/17/80	34	MOTION of pltfs. for leave to file memorandums in opposition to several motions filed by defts filed. Copies mailed 3/14/80.	
3/24/80	35	MOTION of Defts.,State Board of Education of Ohio,etc. to strike Pltfs' reply brief, with memorandum in support filed. c/m 3/20/80	
3/24/80	36	MOTION of Defts.,Kent City School District,Kenneth Cardinal & Michael Chrin to strike, with memorandum in support filed. c/m 3/21/80	
3/24/80		ENDORSED Order granting motion of Pltfs., leave to file memorandums in opposition to several motions filed by defts., filed. Manos,J. - copies mailed.	
3/24/80	37	MEMORANDUM of Pltfs., in opposition to deft., Kent City School Dist.'s motion to dismiss in Limine filed.	
3/24/80	38	MEMORANDUM of Pltfs., in opposition to Defts'Cardinal and Chrin motion for summary Judgment filed.	
3/24/80	39	MEMORANDUM of Pltfs., in opposition to defts memoranda opposing class certification filed.	
5/22/80	40	ORDER assigning case to Judge Ann Aldrich. in compliance with the protocol establishing dockets for newly appointed Judges filed. Manos, J. copies to Kramer,Neimark,Murphy Berliner,Whalen & Gary E.Brown,Asst.Atty Gen.	
7/24/80	41	MOTION of Pltf. for TRO and preliminary injunction filed. c/m 7/24/80.	
7/24/80	42	MEMORANDUM in support of motion for TRO and preliminary injunction filed. c/m 7/24/80.	
7/31/80	43	PROPOSED Preliminary Injunction of Pltf. wiht findings of fact and conclusions of law filed. c/m 7/31/80.	

(O V E R)

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 79-2234
Thomas . Rettig	Kent City School District	PAGE ____ OF ____

DATE		PROCEEDINGS	Date Order or Judgement No
8/1/80	44	WRITTEN Objection to hearing on motion for preliminary injunction filed.c/m 8/1/80	
8/1/80	45	MEMORANDUM of Deft. in opposition to Pltfs. motion for preliminary injunction filed. c/m 8/1/80	
8/1/80	46	PROPOSED FINDINGS of Fact and conclusions of Law by Deft. Kent City School District filed.c/m 8/1/80.	
8/1/80	47	CIVIL SUBPOENA to Produce by Pltf. returned and filed. Served Michael Chrin on 7/30/80 Fees $44.00.	
8/4/80	48	VERIFICATION of Allegations of Complaint by Pltf. Eva Rettig filed.	
8/4/80	49	MINUTES of Proceedings filed. Evidence of Pltf. begun,Hrg. on motion for preliminary injunction,Adjourned until 9:30 a.m. Aldrich,J.	
8/8/80	50	MOTION of Pltf. for leave to file attached memorandum clarifying Pltfs. position on class certification with memorandum in support filed. c/m 8/8/80.	
8/7/80	51	MINUTES OF PROCEEDINGS filed. Status hearing set 9/17/80;preliminary injunction denied .Final arguments,oral opinion . Aldrich,J.	
8/11/80	52	MOTION of Pltf. for leave to substitute pages in Pltfs. memorandum clarifying Pltfs. position on class Certification with memorandum in support c/m 8/11/80.	
8/11/80		ENDORSED Order Granting Pltfs. motion to clarify position on class certification with ten days permitted to defts for response pleading filed. c/issued.	
8/12/80	53	ORDER that Pltfs. motion for preliminary injunction is DENIED ;Further that the Court Oral Opinion is adopted as findings of fact and conclusions of law in accordance with rule 53 filed. Aldrich,J. C/issued.	
8/12/80		ENDORSED Order Granting Pltf.leave to substitute pages in Pltfs memorandum clarifying position on class certification filed. Aldrich,J. c/issued.	
8/25/80	54	MEMORANDUM of Deft. Kenneth Cardinal in opposition to Pltfs. memorandum clarifying position on class certification filed. c/m 8/22/80.	
8/29/80	55	MEMORANDUM of Deft. State of Ohio in opposition to Pltf memorandum clarifying Pltfs. position on class certification filed. c/ to counsel	
9/9/80	56	TRANSCRIPT of Proceedings Before Judge Aldrich on 8/7/80 filed. Kaleta,r.	
9/9/80	57	TRANSCRIPT of Proceedings Before Judge Aldrich on 8/4/80 filed. Kaleta,r.	
9/11/80	58	MEMORANDUM of Deft. State Board of Education in opposition to motion for class certification filed. c/m 9/9/80	
9/15/80	59	MEMORANDUM & ORDER Denying Pltfs. motin for class certification; motion to dismiss of Deft. Kent City School District and State Board of Education and Defts. Cardinal and Chrin's motion for summary judgment are Denied. filed. Aldrich,J. c/issued.	
9/18/80	60	MOTION of Deft. Kent Schools to strike or expunge from the record Letter dated 9/8/80 sent by Pltfs. counsel to Deft. counsel with memo in support filed. c/m 9/16/80	
9/19/80	61	MINUTES of Pre-Trial proceedings filed. Court recommends 3 person panel of experts in autistic field. Defts. to submit to Pltf. by 9/29/80 a report and the experts. Response of pltfs. due 10/3/80 Status hearing on 10/8/80.Aldrich,J.	
11/12/80	62	MOTION of Pltf. requesting court to issue pre-trial order to setna discovery schedule and to set a date for trial on the merits filed. c/m 11/12/80	

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 79-2234
Thomas M. Rettig et al	Kent City School District	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
2/20/81	63	NOTICE of Appearance of counsel Floyd J. Miller as counsel for pltf. filed. c/m 2/19/81
3/6/81	64	MOTION of Pltf. for production of documents and things and entry upon land for inspections and other purposes ,with memorandum in support filed. c/m 3/6/81
3/18/81	65	MEMORANDUM of Pltf. in opposition to pltfs. motion for production of documents filed. c/m 3/18/81
3/24/81	66	REPLY of Pltf. to defts. memorandum in opposition to motion for production of documents and things and entry upon land for inspection and other purposes filed. with affidavit in support c/m 3/23/81
3/25/81	67	ORDER DENYING pltfs. request for production of documentswith reasons 1-3 filed. Aldrich,J.(3/25/81) c/issued.
4/9/81	68	MOTION of American Civil Liberties for leave to file brief amicus curiae filed. c/m 4/9/81
4/9/81	69	MOTION of Deft. for discovery filed. c/m 4/9/81
4/10/81	70	MOTION of Pltf. to file second amended complaint filed. with memorandum in support.c/m 4/10/81
3/10/81	71	SUBMISSION of Pltf. pretrial Brief filed. c/m 4/10/81
4/13/81	72	MOTION of Pltf. for a visit by the court to the locus in quo which is necessary to clarify several factual issues in dispute relevant to the requirement of the least restrictive enviorment as itrelates to the education for all handicapped children filed. c/m 4/13/81
4/13/81	73	MOTION of Pltf. for leave to file a recently decided opinion 3/31/81 which is directly applicable to the case at bar filed. c/m 4/13/81
4/14/81	74	BRIEF of American Civil Libirties Union as Amicus Curaie filed. c/m 4/9/81
4/14/81		ENDORSED Order Granting ACLU leave to file breif as amicus curiae filed. c/m 4/9/81
4/14/81	75	MOTION of Pltf. to permit expert to observe Thomas Rettig's educational setting at Longcoy Elementary School filed. c/m 4/14/81
4/16/81	76	MEMORANDUM of Pltf. in opposition to defts. motion for discovery filed.c/m 4/15/81.
4/17/81	77	MEMORNADUM of deft. Kent City School District in opposition to Pltfs. motion to file a second amneded complaint filed. c/m 4/17/81
4/20/81	78	MEMORANDUM of Asst. Atty General Gary E. Brown contrato pltfs. motion for leave to file second amended complaint filed. c/m 4/17/81
4/21/81	79	MOTION of Pltf. for leave to file reply to defts. memorandum in opposition to pltfs. motion to file an amneded complaint filed.c/m 4/20/81 with letter and exhibits attached.
4/22/81	80	PRETRIAL Brief of Deft State Board of Education of Ohio & Franklin B. Walter superintendent of Public Instruction filed.
4/22/81		ENDORSED Order Granting motion of pltf. for leave to file reply brief to defts memorandum in opposition to pltfs. motion to file an amended complaint filed. Aldrich,J.c/issued (4/22/81)
4/24/81	81	MEMORANDUM and Order Granting in part and Denying in part pltfs. motion to amend complaint. Pltfs. motion to amend complaint to add a new cause is denied. Aldrich,J. c/issued (4/24/81)
4/28/81	82	SUMMONS retruned and filed. Served Dr. Franklin Walter,F Peter Gross,Samuel J. Bonham Jr. on 4/16/81 fees $11.64.
5/6/81	83	SUBPOENA returned and filed. Served Mildred Phillips,William Young, Dr.Donna Lightel.Timothy Griffin,Michael Chrin,Geraldine Irvin,Kathryn Salter,Kaye Workman and John R. Hill on 4/20/81 fees $23.18.

.VIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 79-2234
Thomas Rettig et al	Kent City School District et al	PAGE ___ OF ___ PAGE

DATE	NR.	PROCEEDINGS
4/29/81	84	MOTION of Pltf. for reconsideration filed. c/m 4/29/81
5/5/81	85	MINUTES of Pre-Trial proceedings filed. Trial to commence 5/6/81. Aldrich,J.
5/6/81	86	MINUTES of Proceedings filed. Pltfs. case begun. Aldrich,J. Dixon,r
5/7/81	87	MINUTES of Proceedings filed. Pltfs. case continued. Aldrich,J. Dixon,r.
5/6/81		ENDORSED Order Denying motion of pltf. for reconsiderationfiled. Aldrich,J. c/issued (5/6/81)
5/8/81	88	MINUTES of Proceedings filed. Pltfs. case concluded,Defts. case concluded. Aldrich,J. Dixon,r.
6/3/81	89	POST-TRIAL Brief of Defts., State Board of Education of Ohio & Franklin B. Walter Superintendent of Public Instruction filed. Copies mailed 6/1/81.
6/3/81	90	POST-TRIAL Brief of Deft., Kent City School District filed. Copy mailed 6/3/81.
6/3/81	91	PROFFER of trial exhibit by local Defts. filed. Copies mailed 6/3/81.
8/25/81	92	OPINION AND ORDER Filed. Aldrich, J. (See opinion/or judgment for details). Copies issued. (noted 8/26/81).
8/25/81	93	JUDGMENT on Decision by the Court rendered in favor of pltfs. in part and in favor of defts. in part: it is ordered and adjudged that the State def immediately revise its standard, 3301-5-16(D)(5)(b) so as to comply wit the Federal regulation; that the deft. School District conduct a multi-factored evaluation in strict compliance with 45 C.F.R. Section 121a.53 that evaluation will be incorporated in the new IEP to be formulated fo the 1981-1982 school year, the Rettigs & an expert of their choice may participate in the development of that IEP; that the Kent City School District provide at least one hour per week of extracurricular activiti for Thomas Rettig in accordance with the new IEP; that pltfs.' request deft. School District be ordered to continue to provide Thomas Rettig w a free education for 7 additional years from age 22 to 29 is denied; ea party shall bear their own counsel fees and costs; and further ordered that the court's opinion andorder filed on 8/25/81 is adopted as findin of fact and conclusions of law, in accordance with Rule 52, Fed. R. of Procedure, filed. Aldrich, J. Copies issued. (noted 8/26/81).
9/22/81	94	NOTICE OF APPEAL by pltf. re: 8/25/81 filed. Kramer, Miller, Brown, Whalen & USCA 9/22/81.
9/23/81	95	TRANSCRIPT of Proceedings had before Judge Aldrich commencing on 5/8/81 pages 1-72 (1vol.) filed. Dixon, r.
9/23/81	96	TRANSCRIPT of Proceedings had before Judge Aldrich commencing on 5/6/81 pages 1-394 (1 vol.) filed. Dixon, r.
10/05/81		CERTIFIED ORIGINAL Pleadings mailed to Clerk, USCA.
10/06/81		NOTICE OF CROSS APPEAL by Deft. re: 8/25/81 & 9/22/81, filed. c/m Whalen, Compton, Kramer, Brown & USCA 10/06/81
10/08/81		ACKNOWLEDGEMENT of Transmission form from USCA re: Appeal filed 9/22/81 case no. 81-3586 filed in USCA 10/07/81, filed.
10/16/81		Exhibits (15 vols. of Transcripts) mailed to Clerk, USCA.
10/19/81		Exhibits taken by R. Brent Minney atty. for Kent City Schools, filed.
10/30/81		ACKNOWLEDGEMENT of Transmission form from USCA re: Appeal filed 10/06/81 case no. 81-3595 filed in USCA 10/09/81, filed.
1/6/82		MOTION of pltf for intervention by Court, filed. c/m 1/5/82
1/22/82		RESPONSE of Kent City School Dist. to pltfs.' mot. for intervention, and Moti to strike the mot. for inervention filed. Copies mailed 1/21/81.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO C79-2234
Thoma M. Rettig, et al.	Kent City School District	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
2/1/82		RESPONSE of Pltf. to his school district's mot. to strike or to deny his petition for court intervention in his behalf filed. Copies mailed 1/28/82.
/23/82		ENDORSED ORDER Denying pltf.'s mot. for intervention by this Court for lack of jurisdiction; this Court's final judmt. of 8/25/81 has been appealed by both parties to 6th Circuit Court of Appeals filed. Aldrich, J. Copies issued. (noted 2/24/82).
1/23/84		MOTION of pltf. requesting transfer to its related Case No. C83-2881, filed. c/m 1/21/84. In. I/23/84).
2/9/84	97	POST-TRIAL Brief of pltf., filed. c/m (n. 2/9/84).
2/9/84		SUPPLEMENTAL Pleading No. 97 forwarded to Clerk, USCA by Clerk.
2/9/84		SUPPLEMENTAL Pleading No. 9 forwarded to Clerk, USCA by Clerk.
2/9/84		PRE-TRIAL Brief of Kent City School District, Kenneth Cardinal & Michael Chrin, filed.
1/26/84		MEMORANDUM & OPINION denying rehearing pursuant to remand from U.S.C.A., filed. Aldrich, J. Issued I/26/84. (r.
2/17/84		ALL EXHIBITS from U.S.C.A. returned & filed.
2/21/84		NOTICE of Appeal by deft, filed. inre: I/26/84. c/m Whalen, Compton, Jr., Kramer, Miller & USCA. (n. 2/22/84).
2/22/84		TRUE copy of Mandate from USCA affirming case in part, vacated in part & remand to the District Court not inconsistent with the opinion of this Court. Each party will bear his own costs on appeal, filed. Issued as Mandate: 2/15/84. Costs: None; No Costs Taxed. Lively, Chief Circuit Judge; Krupansky, Circuit Judge; Feikens, District Judge. Record Returned with entire transcripts on appeal. (n. 2/22/84). (11/8/83).
2/22/84		SLIP OPINION, filed.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

February 16, 1984

Ms. Eva O. Rettig
586 Francis Street
Kent, Ohio 44240

Re: Case Nos. 81-3586 and 81-3595
Thomas M. Rettig; Eva O. Rettig
vs. Kent City School District,
et al.
Dist. Ct. No. C79-2234

Dear Ms. Rettig:

I am returning herewith, as unfiled, the motion by Thomas M. Rettig for a rehearing.

Please be advised that the mandate of this Court was issued on February 15, 1984, pursuant to Rule 41(a), Federal Rules of Appellate Procedure. Therefore, this Court no longer has jurisdiction in this matter.

Very truly yours,

John P. Hehman, Clerk

Cathy Weber

By: (Mrs.)Cathy Weber
Deputy Clerk

Enclosures
cc:
Mr. Edward G. Kramer
Mr. Dennis M. Whalen
Mr. Gary E. Brown

E-4a

RECEIVED
FEB 16 1984
JOHN P. HEHMAN, C

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG Plaintiff-Appellant Cross-Appellee v. THE KENT CITY SCHOOL DISTRICT, Defendant-Appellee, Cross-Appellant, KENNETH CARDINAL, et al., Defendants-Appellees	Nos. 81-3586, 81-3595 BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge MOTION BY THOMAS M. RETTIG FOR A REHEARING

This Court has denied Eva Rettig a Rehearing. It has construed her letter of January 6, 1984 as a Motion for Reconsideration and has denied it as well. While she is writing the within Motion for a Rehearing, she is doing it in the stead and by the command of Thomas M. Rettig, imploring this Honorable Tribunal to provide him a Hearing based upon the entire Record beginning with the Independent Hearing Officer's Hearing which the State Board of Education provided him.

commencing on January 29, 1979, it concluded on April 4, 1979 after fourteen components constituting the hearing. (This independent hearing officer's hearing was provided to Thomas Rettig instead of the due process hearing to Eva Rettig which she had requested of the Kent City School District on February the last of 1978.) Exhibits 1, 2, 3 (attached) relate to this fact.

Section 3323.04 Revised Code of Ohio governed the hearing Thomas Rettig was given. Both Thomas Rettig and his mother appealed to the Ohio State Board of Education which involved a two-stage State level review of the appointed officer who was commissioned by the Ohio State Board of Education in the first place because Dennis Whalen requested this course of action for the Kent City School District and its employees. Neither the Kent City School District nor the State of Ohio provided a due process hearing to Eva Rettig, in violation of Federal and State law

E 4(6)

The procedure continued to the Federal District Court under the Education for All Handicapped Children Act of 1974 (P.L.93-380 as amended by P.L.94-142.) The District Court provided a review for the most part. It provided no appropriate relief to Thomas Rettig. The case continued on into the Sixth Circuit Court of Appeals.

However, the Sixth Circuit Court panel of judges never had the benefit of consulting the cumulative record because the record was never transmitted to Cincinnati. There is no trace of any of these exhibits constituting the administrative record (which Judge Aldrich was required to review) in Cincinnati, as learned by Eva Rettig on her recent visit to Cincinnati. Thus, the Honorable Three Judge Panel assigned to Thomas Rettig could not possibly have based its Judgment of November 6, 1983 upon the Record. Therefore, this Slip Opinion as written by Judge Krupansky is completely unfair to Thomas Rettig. This is why he should be provided a rehearing.

In March of 1980, Gary Brown provided for the "CONVEYANCE of Administrative Record by State of Ohio Board of Education and Franklin D. Walter, S.I. (Box of records in exhibit room) 2nd floor." (See number 19 on the Cleveland Docket Sheet). Number 23 on the same Docket Sheet is the "TRANSCRIPT of Administrative Hearing to be filed with record of conveyance of Administrative record on 3/6/80 filed." The Certified Record filed by Gary Brown in Cleveland consists of the following:

(1) Fourteen transcripts of those fourteen days of hearings held in Kent
(2) Rettig Exhibits Nos. 1 through 67 admitted into the record in Kent
(3) Kent City School District Exhibits admitted into the record in Kent (A-Z, AA-ZZ, AAA-HHH)
(4) IHO Exhibits 1 and 2
(5) 3 video tapes of the evaluation done by qualified Judevine Center (Autism professionals of Thomas Rettig just days prior to the hearing in Kent
(6) Report of the IHO and Post-Hearing briefs of the parties (this did not include Eva Rettig as a party)
(7) Proceeding at state level review
    (a) Correspondence
    (b) Proceedings before State Level Referee
    (c) Action taken by State Board of Education (State Board's Resolution and Order)
    (d) Report of the Referee
    (e) Objections to Referee's Report filed by Eva Rettig

None of these exhibits are in the Courts of either Cleveland or Cincinnati.

Eva Rettig personally searched both places looking for these exhibits; and for the exhibits that the Rettigs had asked Judge Aldrich to admit into the Record at the time she granted us a hearing on a TRO and PI; and at the time of the trial on the merits. The Three-Judge-Panel never saw any of these exhibits either. Neither did these Judges see the transcripts of the Hearing on the TRO. Yet they upheld Judge Aldrich. What basis does this judgment have then? A very important exhibit was the educational evaluation admitted into the record at the time of the TRO. The document never made it to Cincinnati from the information available. The Three-Judge-Panel never had an opportunity to read the very important testimony elicited in conjunction with this later evaluation because those transcripts were never transmitted to Cincinnati.

Attached as Exhibit 4 to this Motion is a copy of a letter Eva Rettig found in the old file in Cleveland. It shows that the local defendants' attorneys were told that these very documents were needed in Cincinnati and they were requested by Cincinnati as early as October 9, 1981. Please note that the Plaintiffs were kept in the dark: neither the Courts nor the defendants saw fit to inform them via a copy. In other words, all the Decisions the Cincinnati Court made since at least October 9, 1981 were not in compliance with the dictates of the record. This "oversight" - better called violatation of right to notice - is detrimental to Thomas Rettig who is completely helpless. Please provide him a rehearing.

Attached as Exhibit 5 to this Motion is a copy of a document filed with the Clerk of the District Court. It shows that an attorney for the Kent City School District dropped in on October 19, 1981 and took with him "ALL EXHIBITS." Please note that there is no signature of any District Judge; and it does not indicate when these legal documents are to be returned. Again, the Plaintiffs were not informed of this activity.

Thus, the defendants have removed from the Court not only the entire administrative record discussed above, they also have removed our two independent educational

evaluations demonstrating the need of Thomas Rettig for a different kind of evaluation from the one that Michael Chrin forced upon Thomas Rettig behind the Rettigs' back. The two evaluations demonstrate the need for programming to deal with autism and how this disability interrupts the already slow learning of this human being. Year-round programming is necessary based upon the information in the record.

Furthermore, the Thre-Judge-Panel never saw the Post Trial Brief which the Rettigs paid Edward Kramer to write in behalf of Thomas Rettig. Apparently, neither did Judge Aldrich see the Brief since it was never filed in Cleveland, and, therefore never transmitted to Cincinnati. This fact might explain why Judge Aldrich had no knowledge of the required procedures involving the illegal exclusion of Thomas Rettig from a class for slow learning children. Had she consulted this Brief (found by Eva Rettig in the basement files in Cleveland last Thursday), she would have seen the procedures together with the eligibility requirements for the placement of the young child into the class for slow learning children which Michael Chrin operated. They were attached as exhibits to the brief- ONLY to the ORIGINAL BRIEF, that is, which had not been filed with the Cleveland Court as of February 9, 1984. At my request, the Clerk of Courts said he would transmit the original of this Brief to Cincinnati that day. Please read and consider it together with the entire Record which has been kidnapped by the local defendents. Please order them to return each and every page of these documents necessary for a fair and just review by the Court now or by the Supreme Court later, if necessary.

Please have mercy on Thomas Rettig. He is not able to express these concerns in person. His mother promises to try to do what you require of her in behalf of Thomas.

Please provide a judicial review of the entire Record to Thomas Rettig whose question must be: HAS THE KENT CITY SCHOOL DISTRICT EVER PROVIDING ME A FREE

APPROPRIATE PUBLIC EDUCATION?

Should the State Board of Education have found that the Kent City School District was required to have had a legally required evaluation of me at the various periods of my school-aged life? They said no in 1979 on three occasions at least. Should Judge Aldrich have found that there has been no free appropriate public education for Thomas Rettig because there have been no appropriate evaluations used on Thomas and that this not only violates his statutory rights but also his right to due process under the United States Constitution? He should have been provided Notice, a Hearing, and an Appeals Procedure long before his mother demanded a due process hearing; should he not have?

Should the Sixth Circuit Court of Appeals find the Kent City School District out of compliance with the Federal and State laws?

Should Thomas Rettig be provided compensatory education? Who should pay for it? Should his parents be reimbursed for all the expenses they incurred? Clearly, these expenses are much more than support and maintenance of a child. Who should pay for these expenses? Thomas Rettig has not been taught by his school to do work for pay. He cannot now pay for anything. Will he be taught with the help of this High Court?

Will Thomas Rettig have to ask his mother to take his case to the Supreme Court of these United States because the Sixth Circuit Court of Appeals had no time for him? It found time for all the defendants; but not for the human child. So far.

PLEASE PROVIDE A REHEARING FOR THOMAS RETTIG.

Respectfully submitted,

Eva Rettig

Eva O. Rettig for Thomas M. Rettig
586 Francis St.
Kent, Ohio 44240

216 678-0288

I have mailed a copy each to the defendants and to the Amicus of this Court today. First class mail 2-14-84 Rettig

Board 978

The Kent Public Schools: Supt. of Instruction
President of the Board of Education

At the regular board meeting on Monday, Feb.27, 1978 I did formally, and in front of many witnesses, request an Impartial Due Process Hearing.

I had called the Asst. Supt. of Kent Schools on Feb.21, 1978 requesting my name be placed on the Agenda of the Board Meeting.

Why was my name not placed on the Agenda?

1. I hereby formally request again an impartial due process hearing regarding the provision of free appropriate education in the least restrictive placement of my son Thomas H. Kettig.

   I am dissatisfied with my son's education as it is presently provided.

2. I respectfully request a copy of each page and of every page, note, entry, etc. of <u>all</u> school records regarding my son. I am prepared to pay for the actual cost.

In view of the fact that I have been very reasonable and patient in reaching a final decision in the matter, I ask the Kent Schools to move as quickly as possible. The child is 13 years old and has needed more help from the time he was born with early infantile autism.

Thomas Kettig

INDEPENDENT HEARING OFFICER'S HEARING

- - -

In The Matter of:

THOMAS RETTIG

and

THE KENT CITY SCHOOL DISTRICT

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter held at the Kent City School District Board of Education Building, 321 North DePeyster Street, Kent, Ohio, before the Impartial Hearing Officer, David P. Freed, by appointment of the State Board of Education, and commencing on Wednesday, the 31st day of January, 1979, at 2:00 o'clock, p.m., at which time the following proceedings were had.

- - -

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INDEX TO TRANSCRIPT OF PROCEEDINGS

VOLUME	DATE OF HEARING
1	January 29, 1979
2	January 30, 1979
3	January 31, 1979
4	February 21, 1979
5	February 22, 1979
6	February 23, 1979
7	February 27, 1979
8	February 28, 1979
9	March 2, 1979
10	March 6, 1979
11	March 7, 1979
12	March 13, 1979
13	April 3, 1979
14	April 4, 1979

3

LAW OFFICES
McDOWALL & WHALEN
P. O. BOX 8
135 PORTAGE TRAIL
CUYAHOGA FALLS, OHIO 44222

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G. FREDERICK COMPTON, JR.
JEROME G. REIDY
R. BRENT MINNEY

TELEPHONE
(216) 929-4291

CABLE ADDRESS
"WHALE"

October 9, 1981

David Benik, Deputy Clerk
Clerk of Courts
United States District Court
Cleveland, OH 44114

Re: Thomas Rettig, et al v. Kent City School District, et al
District Court No. C79-2234
Court of Appeals No. 81-3586
Our File No. 132.22(A)

Dear Mr. Benik:

Today I spoke with Miss Kathy Preuitt, Deputy Clerk, of the United States Court of Appeals, Sixth Circuit, concerning the above-captioned matter. During the proceedings of the above-captioned matter in Judge Aldrich's Court, counsel and the Court referred to the administrative record that was filed with the Court as an exhibit. It is my understanding, after speaking with Judge Aldrich's Court, that the administrative record was not sent to Cincinnati as part of the record. Miss Preuitt suggested that I request that you transmit all of the administrative record and exhibits to Cincinnati. This is based upon the fact that the administrative record and exhibits contain evidence upon which the Court relied in rendering its decision. Please advise the undersigned when the transmission of the administrative record and exhibits has been accomplished.

Miss Preuitt suggested that if there is any question or problem that you contact her directly.

Your cooperation in this regard will be appreciated. If you have any questions or problems, feel free to contact me at your convenience.

Very truly yours,

DENNIS M. WHALEN CO., L.P.A.

G. Frederick Compton, Jr.

G. Frederick Compton, Jr.
Attorney at Law

GFC:bjc
cc: Miss Kathy Preuitt, Deputy Clerk
Dr. Donna G. Lightel, Superintendent

4

D. C. Form No. 22

No. C79-2234

United States District Court

NORTHERN DISTRICT OF OHIO

THOMAS RETTIG

vs.

KENT CITY SCHOOL DISTRICT

RECEIPT FOR FOLLOWING PAPERS

All Exhibits

FILED
OCT 19 AM 9 18
CLERK U.S. DIST. COURT
NORTHERN DISTRICT OF OHIO

The above papers taken from the files by

R. BRENT MINNEY

attorney for Kent City Schools

Dated Oct. 19, 1981

To be returned within _____ days.

Allowed:

_____
District Judge.

586 Francis Street
Kent, Ohio 44240

November 8, 1981

CERTIFIED MAIL RRR

Clerk
U.S. Court of Appeals for the Sixth Circuit
Cincinnati, Ohio

Re: Appeal from District Court
District Ct. Docket No.: 079-2239
Date filed in District Court: 11-30-79
Date Notice of Appeal Filed: 9-22-81
Date Pre-Argument Statement Filed: 10-16-81

Case Title in Full
Thomas M. Rettig
and
Eva O. Rettig, Plaintiffs

VERSUS
Defendants
(Kent City School District
(Donna Lightel, Supt. (present)
(Kenneth Cardinal, Supt. (former)
(Michael Ghrin, Dir. of Child
(Study and Special Education
State Board of Education of Ohio
Franklin B. Walter, SPI

Cross Appellants

Please be informed that Thomas M. Rettig and Eva O. Rettig will not be represented by counsel in the appeal filed on October 16, 1981 by Edward Kramer, Esq., former counsel for Plaintiffs.

Note also that the parents of Thomas M. Rettig intend to include in their argument chapter 3321. R.C.O. as well as P.L. 91-230, P.L. 93-380, P.L. 94-482 (Amendments to the Vocational Education Act of 1963)as referenced in Sec. 121a of Title 45), Sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706. These are in addition to those indicated by Mr. Kramer.

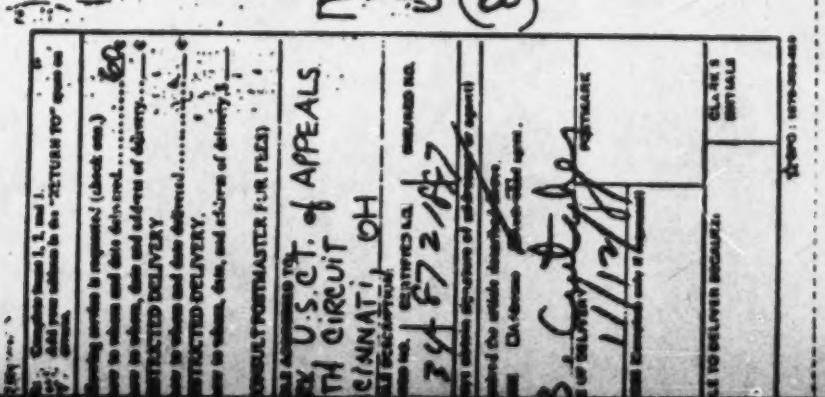
Please notify me immediately if my notice does not meet the requirements of the U.S. Court of Appeals for the Sixth Circuit. Needless to say, I am no attorney and I do not know "the ropes". Please advise.

Sincerely yours,

(Mrs.) Eva Rettig

CC by regular mail: Kent City School District Bd. of Education, c/o Clerk-Treasurer
Donna Lightel, Supt., Kent Public Schools
Michael Ghrin, Dir., Child Study and Special Education, Kent SS
State Bd. of Ed. of Ohio and Franklin B. Walter, SPI, c/o
F.B. Walter, Secretary of the Bd., and in his own capacity
CC by Certified Mail - RRR- Edward C. Kramer, Esq.

E-5(a)



NATURE OF SUIT
(Check as many as apply)

1. FEDERAL STATUTES

( ) ANTITRUST
( ) BANKRUPTCY
( ) BANKS & BANKING
(X) CIVIL RIGHTS
( ) COMMERCE, ROUTES, AND TARIFFS
( ) COMMODITIES
( ) COMMUNICATIONS
( ) CONSUMER PROTECTION
( ) COPYRIGHT ( ) PATENT OR ( ) TRADEMARK
( ) ELECTION
( ) ENERGY
( ) ENVIRONMENTAL
( ) FREEDOM OF INFORMATION
( ) IMMIGRATION
( ) LABOR
( ) OSHA
( ) SECURITIES
( ) SOCIAL SECURITY
( ) TAX
(X) OTHER (Specify): 20 U.S.C.§§1401 et seq., O.R.C. §§3323.01 et seq.

2. TORTS

( ) ADMIRALTY/MARITIME
( ) ASSAULT/DEFAMATION
( ) PRODUCT LIABILITY/ WARRANT
( ) DIVERSITY
( ) OTHER (Specify):

3. CONTRACTS

( ) ADMIRALTY/MARITIME
( ) ARBITRATION
( ) COMMERCIAL
( ) EMPLOYMENT
( ) INSURANCE
( ) NEGOTIABLE DISBURSEMENTS
( ) DIVERSITY
( ) OTHER (Specify):

4. PRISONER PETIT

( ) CIVIL RIGHTS
( ) HABEAS CORPUS (2254)
( ) MANDAMUS AND OTHER
( ) PAROLE
( ) VACATE SENTENC (2255)

5. OTHER

( ) FORFEITURE/ PENALTY
( ) REAL PROPERTY
( ) TREATY (Specif
( ) DIVERSITY
( ) OTHER (Specify

ISSUES PROPOSED TO BE RAISED ON APPEAL, INCLUDING JURISDICTIONAL CHALLENGES

The Trial Court erred by not granting compensatory education for failure of the Kent City School District to provide Thomas Rettig with an appropriate public education and wrongfully excluding him without the following of procedural safeguards mandated under the Fourteenth Amendment.

The Trial Court erred in not finding that the Kent City School District violated state law by its failure to provide a medical examination prior to Thomas Rettig's initial placement in a classroom.

The Trial Court erred in not ordering in-service training on effective methods of teaching for teachers, supervisory personnel and parents of Thomas Rettig, who has autism and retardation, as mandated by federal and state laws.

The Trial Court erred in not finding that the Kent City School District failed to provide an appropriate multidisciplinary and multi-factored evaluation to determine Thomas Rettig's individual educational needs as mandated by federal and state laws.

The Trial Court erred in not finding that the Individualized Education Programs (IEPs) prepared for Thomas Rettig for 1976-77, 1977-78, and 1978-79 did not meet the mandates of federal and state law.

The Trial Court erred in not finding that the Kent City School District violated federal and state requirement by failing to provide Thomas Rettig with an appropriate twelve-month special education and related services which would meet his unique needs.

The Trial Court erred in not finding that the Kent City School District violated federal and state requirement in undertaking evaluations of Thomas Rettig without prior notice or consent of his parents.

The Trial Court erred by placing the burden of proof improperly on the appellants rather than the appellees.

The Trial Court abused its discretion in not awarding attorneys' fees and costs to the appellants.

This is to certify that this civil appeal pre-argument statement was mailed the Clerk of the U.S. Court of Appeals for the Sixth Circuit and a copy proof served to each party or their counsel of record this 16th day of October, 1981.

(Signature of Counsel)

E-5(b)

586 Francis Street
Kent, Ohio 44240

May 5, 1984

CERTIFIED MAIL -RRR

Office of the Clerk
U.S.C.A. for the Sixth Circuit
Cincinnati, OH 45202

Re: 81-3586
81-3595
D.C. C79-2234

Rettig v. Kent City School Dis. et al.

Dear Clerk:

The above case has been appealed to the U.S. Supreme Court by Thomas M. Rettig under 28 U.S.C. 1254(2).

The Kent City School District et al. has filed a motion to Dismiss or Affirm. They contest jurisdiction on appeal.

It is imperative that the Supreme Court have at its direct and immediate disposal the entire ADMINISTRATIVE RECORD as certified and conveyed by the Ohio Department of Education to the U.S.D.C. in Cleveland on March 6, 1980. On the District Court Docket Sheet this ADMINISTRATIVE RECORD is item number 19.

You must also include item number 23 of that same Docket Sheet because the TRANSCRIPT is also required in Washington.

To describe the contents of the ADMINISTRATIVE RECORD more closely:

14 bound volumes of transcript of local hearing
1 bound volume of Decision of Hearing Officer

67 written documents as exhibits marked Rettig 1-67
60 written documents as exhibits marked Board of Education A - HHH
2 written documents marked Hearing Officer 1 and 2

Correspondence between Ohio Bd. of Ed. and Eva Rettig relating to the State Level Review

Brief of Rettig to Ohio State Bd. of Education
200 + pages of objections filed by Eva Rettig to report and recommendations of state referee

In short, everything relating to the case prior to the action in the District Court.

Sincerely yours,

Eva O. Rettig

EVA O. RETTIG
for Thomas M. Rettig, Appellant

CC Office of Clerk,
Supreme Court
Dennis Whalen
Gary Brown

E-6